



# VAT newsletter

## July 2025

### I. LEGISLATION AND UPDATES

#### Reform of the Economic Agreement with the Basque Country: Changes in VAT and Foral Taxation in General

On 30 April 2025, Law 3/2025 of 29 April was published in the Official State Gazette, amending Law 12/2002 of 23 May, which governs the Economic Agreement with the Autonomous Community of the Basque Country. This reform aligns the Agreement with recent developments in the national tax system, especially following the enactment of Law 7/2024, and introduces significant changes in taxation, tax management, and inter-administrative cooperation.

Among the most relevant changes, the Agreement now incorporates the Complementary Tax to ensure a global minimum level of taxation for large multinational and national groups, in compliance with Directive (EU) 2022/2523. It also includes the Tax on the Net Interest and Commission Margin of certain financial institutions and the Tax on Liquids for Electronic Cigarettes and Other Tobacco-Related Products.

Additionally, one of the key aspects of the reform is the update of the turnover threshold, which is increased from EUR 10 million to EUR 12 million. This threshold is used to determine the applicable regulations (foral or national), the competent tax authority, and the attribution of audit powers.

This new threshold will apply, as of 1 January 2026, to the following taxes:

- ▶ Value Added Tax (VAT).
- ▶ Corporate Income Tax.
- ▶ Gambling Tax.

As a result, companies exceeding this threshold and operating in both (foral and national) territories will be required to pay taxes to both administrations in proportion to the turnover generated in each territory, in accordance with the applicable connection points.

Another significant development is the inclusion of a new Additional Provision Seven, which enables collaboration mechanisms between tax authorities to facilitate access to the VAT import deferment scheme (provided for in Article 167 bis of the VAT Law and Article 74 of the VAT Regulation) for taxpayers who are not fully taxed under the State Administration, thereby removing a practical barrier for foral operators.

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Furthermore, technical improvements are introduced in tax management and control, allowing foral institutions to implement new forms of compliance with formal obligations (invoicing and/or record-keeping) when based on technological developments, provided that information exchange with the State Administration is guaranteed.

Last but not least, another major reform is the conversion of the Non-Resident Income Tax (NRIT) into a concerted tax governed by autonomous legislation. Until now, this tax was governed by State rules, but following the amendment of Article 21 of the Agreement, the Foral Deputations will now be allowed to establish their own regulations in this area.

In summary, Law 3/2025 introduces a series of amendments to the Economic Agreement with the Basque Country, adapting its provisions to recent developments in both national and EU tax law. These reforms affect areas such as the inclusion of new taxes, the update of thresholds, and the improvement of tax management and cooperation between administrations.

### Changes to VAT Adjustments in CAU-H1 Imports as from 7 July 2025

The Spanish Tax Agency (Agencia Estatal de Administración Tributaria) has announced a relevant modification in the way positive and negative adjustments to the taxable base of VAT are to be declared in imports processed under the CAU (H1) format, which will come into effect on 7 July 2025. This measure exclusively affects customs declarations and constitutes a technical update aligned with the EU's digitalisation and control standards. The H1 format is used for the release for free circulation of goods from third countries under the new digital framework of the Union Customs Code.



As from this date, the use of code 7002 to declare expenses that are added to the VAT taxable base on importation will be discontinued. Instead, such amounts must be declared under code CA within the additions and deductions block of the CAU system. Operators must declare these amounts in euros and must limit them to a single amount per item, strictly complying with the new technical requirements.

In addition, new specific codes are introduced for adjustments affecting the statistical value in import declarations. In particular, code EA shall be used to reflect positive adjustments and code FA for negative adjustments. Both codes must also be used with amounts expressed in euros and declared individually per item, in line with the established structure for each addition or deduction category.

The Tax Agency reminds that the former pre-CAU system will be definitively closed on 14 October 2025, after which all declarations must be made exclusively through the CAU (H1) system. This implies the need for operators to fully adapt to this new digital customs management environment.

### New Census WEB Service to Facilitate Registration in the Business Census

The Spanish Tax Agency has launched "Census WEB," a new service designed to simplify the initial procedures for individuals starting a self-employed economic activity. Primarily aimed at individuals, this digital assistant enables guided submission of form 036, both for registration in the census of business owners, professionals and withholders, and for deregistration or changes to the tax address.

Now available on the Spanish Tax Agency's Electronic Headquarters, the system offers an assisted experience through a series of questions that dynamically adapt the form to the user's specific situation. As a result, only the relevant sections and boxes are displayed, and many fields are automatically pre-filled.

One of the most useful features of Census WEB is that it does not require technical knowledge about tax regimes. The system itself automatically assigns the applicable VAT or personal income tax regime based on the answers provided by the taxpayer. This reduces errors and speeds up the registration process.

In addition, the new assistant includes integrated contextual help: by clicking on the question mark icons next to certain boxes, users can access clear and up-to-date explanations available on the Electronic Headquarters. The service also offers access to specialised virtual assistants to guide users step by step.

In certain more complex cases—such as agricultural or fishing activities, retail traders with international operations, or entrepreneurs located in territories with special tax regimes such as the Canary Islands, Ceuta or Melilla—Census WEB does not yet cover all scenarios. In these cases, the system automatically redirects the user to the traditional form 036, which has also been recently improved to facilitate its completion.



Thus, this new service is positioned as a comprehensive tool for managing census procedures for entrepreneurs and self-employed workers, removing administrative barriers and reducing the formal burden of business start-up and subsequent census modifications.

## II. COURT OF JUSTICE OF THE EUROPEAN UNION CASE LAW

### Judgment of 8 May 2025 by the Court of Justice of the European Union. Case C 615/23 (Dyrektor)

*Preliminary ruling — Taxation — Common system of value added tax — Directive 2006/112/EC — Article 73 — Taxable amount — Consideration — Subsidies directly linked to the price of a taxable transaction — Public passenger transport services — Compensation paid by a local entity to the service provider to cover the expenses incurred — Direct link between the compensation and the services provided..*

ta servicios aduaneros y logísticos, ante la autoridad tributaria In this judgment, the CJEU examines the limits on including public aid, specifically subsidies, within the VAT taxable base.

The dispute arose in Poland, where the Polish Supreme Administrative Court referred a preliminary ruling request to the CJEU in a case between the Director of the Polish National Tax Information Service and the company P. SA, regarding whether compensation paid by a local authority to a public transport operator should be included in the VAT taxable base.

The case concerns P. SA, which intended to provide public transport services under a contract with a local entity. Ticket prices would be set by the local authority, and since the revenue would not cover the costs, a lump-sum compensation would be paid to cover the resulting losses.

The company argued that such compensation should not be included in the VAT taxable base, as it did not directly affect ticket prices but merely helped cover costs. However, the Polish authorities took a different view, questioning whether a direct link was required between the subsidy and the service price, or whether it was sufficient that the compensation enabled a lower price than would otherwise be charged.

The Court reiterated that in order for a subsidy to be considered directly linked to the price and included in the VAT taxable base, there must be a clear connection to the taxable transaction. Specifically, the subsidy must reduce the price paid by the recipient of the good or service.

In this case, the CJEU concluded that the compensation received by P. SA did not directly influence ticket prices, as these were not adjusted in proportion to the compensation received, nor was the payment made for a service provided to individually identifiable recipients.

Lastly, although in the *Le Rayon d'Or* case (judgment of 24 March 2014, case C 151/13) a lump-sum paid by a third party was included in the taxable base, that case involved a direct link between the service and payment to specific individuals. In the present case, such a link could not be established.

Therefore, according to the CJEU, Article 73 of the VAT Directive must be interpreted to mean that a lump-sum compensation paid by a local entity to cover losses in public passenger transport services does not form part of the VAT taxable amount.

### Judgment of 8 May 2025 by the Court of Justice of the European Union. Case C 405/24 (L.s.c.)

*Preliminary ruling — Taxation — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 143(1)(b) — VAT exemption for imports — Directive 2006/79/EC — Goods subject to small non-commercial consignments from third countries — Recipient resident in a Member State other than the importing Member State.*

Case C 405/24 of the CJEU originated from a query raised by the company L. s.c., which provides customs and logistics services, before the Polish tax authority. The company asked whether VAT exemption could be applied to imports into Poland of small non-commercial consignments addressed to recipients in another Member State.

The tax authority responded negatively, stating that under Article 52 of the Polish VAT Act, such imports were only exempt if the recipient resided in the same Member State as the import — in this case, Poland.

L. s.c. challenged this decision in Polish administrative courts, but its appeal was dismissed. It subsequently brought the case before the Polish Supreme Administrative Court, which referred a preliminary ruling to the CJEU on the compatibility of this national provision with EU law.

In this regard, it is worth noting that Article 143(1)(b) of Directive 2006/112 obliges Member States to exempt final imports of goods covered by Directive 2006/79. The latter states that small consignments between individuals are exempt from VAT if the recipient is located in a Member State — without requiring that it be the Member State of importation.

Based on this, the CJEU concluded that the use of the phrase “a Member State” rather than “the Member State of importation” in the European legislation indicates that the exemption should apply regardless of the recipient’s country of residence. The purpose of the exemption is to facilitate small personal shipments between individuals from third countries, due to their non-commercial and personal nature. Therefore, restricting the exemption to recipients residing in the importing country has no legal basis in Directive 2006/79 and contradicts the harmonisation objective of the VAT system.

In summary, the CJEU held that Article 143(1)(b) of Directive 2006/112 and Article 1 of Directive 2006/79 preclude national legislation such as the Polish one. Consequently, Polish authorities may not deny VAT exemption in these cases, establishing precedent for the harmonised treatment of small non-commercial consignments within the EU.

### III. DOMESTIC COURT DECISIONS

#### Judgment 555/2025 of 13 May 2025 by the Spanish Supreme Court. Appeal 142/2024.

This judgment from the Spanish Supreme Court analyses a jurisdictional dispute between the Provincial Council of Bizkaia and the Spanish Tax Agency (AEAT) regarding the application of a VAT refund when the taxpayer had changed its tax domicile.

In this case, the Provincial Council of Bizkaia (hereinafter, “DFB”) filed an administrative appeal against a ruling by the Arbitration Board of the Economic Agreement, which assigned to it the obligation to refund a VAT amount of €78,129.76 corresponding to the 2015 tax year for the UTE GROUNDFORCE BIO 2015, following a jurisdictional conflict with the AEAT due to the change of the UTE’s tax domicile.

The UTE had been established on 27 May 2015 in Madrid by two companies based in the Balearic Islands. Although it initially declared its tax domicile at Bilbao Airport (Bizkaia), it decided in December 2015 to transfer it to the Balearic Islands, and duly notified both the AEAT and the DFB.



The dispute arose when the UTE filed its 2015 annual VAT summary return with the DFB in January 2016, requesting compensation of the mentioned amount. However, the DFB argued that, since the tax domicile had retroactively been considered to be in the common territory from the date of incorporation, the refund should be handled by the AEAT.

The Arbitration Board ruled that, although both Administrations recognised the domicile as located in the common territory from May 2015, the inter-administrative credit resulting from undue payments expires four years after the chargeable event, and the domicile change request was not filed within that period. Therefore, the VAT refund was the responsibility of the DFB. The DFB countered that the prescription period should be calculated from the date of the refund request, not the VAT accrual date. It claimed that both AEAT and DFB had acknowledged the domicile as being in the common territory from the start, and therefore the Arbitration Board had erred by applying a restrictive interpretation of the statute of limitations.

In view of the above, the Supreme Court upheld the position of the Arbitration Board, reiterating its case law which holds that the inter-administrative credit arises at the time the undue payment is made to a non-competent authority, and cannot be affected by taxpayer actions such as the refund request. Furthermore, the Court affirmed that the four-year limitation period for inter-administrative claims begins from the date of the undue payment (January 2016), and is not interrupted by subsequent taxpayer declarations.



The Supreme Court also clarified that, even if a retroactive tax domicile change is accepted, this does not alter the calculation of the limitation period, which still starts from the effective payment into the incorrect Administration.

Therefore, the Spanish Supreme Court dismissed the appeal filed by the Provincial Council of Bizkaia, concluding that the 2015 VAT refund was its responsibility, as the inter-administrative claim to transfer the refund obligation to the AEAT had expired.

#### IV. ADMINISTRATIVE RESOLUTIONS

##### **Decision of the Central Economic-Administrative Court (TEAC). Resolution no. 00/04359/2024, dated 13 May 2025, on VAT refunds on services related to congresses and events organised by non-established companies.**

In this resolution dated 13 May 2025, the TEAC established doctrine regarding the VAT treatment of scenarios involving the organisation and attendance at business congresses and events, especially when the client is established outside the European Union.

The case concerned XZ Co Limited, a company domiciled outside the EU, which had applied for a VAT refund in Spain under the procedure set out in Article 119 bis, paragraph 2 of Law 37/1992.

The request related to various services acquired in Spanish territory—accommodation and passenger transport—on the occasion of its client's participation in a professional congress held in Spain.

The Spanish Tax Agency denied the refund on two main grounds: firstly, the lack of reciprocity with the country of origin of XZ Co Limited; and secondly, the belief that the activity involved mere re-invoicing of individual services such as transport or accommodation, which, in its view, should be considered located in the Spanish VAT territory under the place-of-supply rules. Therefore, the Agency concluded that the corresponding VAT should have been charged in Spain, making the special refund scheme for non-established taxable persons inapplicable, and that the general regime in Article 115 of the VAT Law should apply instead.

However, the TEAC rejected the tax authorities' reasoning, describing it as vague and confusing, and upheld the company's claim. Firstly, the Court held that the services provided by XZ Co Limited could not be regarded as mere re-invoicing, but rather, in line with the criteria of the Directorate General for Taxation (DGT), constituted a single, complex and integrated service of business event organisation. Within this overall service, the various components such as accommodation, transport, meals, etc., are ancillary to the main service.

This classification of the services as a single complex service—supported by repeated TEAC and DGT doctrine (consultations V3331-14 and V0751-19)—means that the place of supply is governed by Article 69.One.1 of the VAT Law. Accordingly, as the service was rendered to a non-established customer in Spain, the operation was not located in the Spanish VAT territory, was not subject to Spanish VAT, and therefore could not be excluded from the special refund regime.

Additionally, the TEAC examined the exception to the reciprocity requirement laid down in Article 119 bis.One.3 of Law 37/1992, which allows VAT refunds even to entities based in countries with no reciprocity, provided the services acquired are directly linked to participation in trade fairs, congresses, or professional exhibitions, including hospitality, catering and transport services.

In this context, the TEAC concluded that the event in question met the necessary criteria to apply the legal exception under Article 119 bis.One.3: it was a professional congress, open to sector participants, held at a specific time and place, with promotional and commercial objectives. As a result, the Court upheld the company's claim and recognised its right to recover the VAT incurred for services connected to that event under the special refund regime for non-established taxable persons.

This resolution reinforces a broad and purposive interpretation of Article 119 bis of Law 37/1992, especially in business contexts where services are clearly linked to active participation in international professional events.

**Decision of the Central Economic-Administrative Court (TEAC). Resolution no. 00/05698/2023, dated 13 May 2025, on the modification of the VAT taxable base due to bad debts.**

This resolution by the Central Economic-Administrative Court (TEAC), in case no. 00/05698/2023, dated 13 May 2025, addresses the interpretation and application of Spanish VAT law on modifying the taxable base due to uncollectible debts, in relation to Article 90 of Directive 2006/112/EC.

The case involved the company XZ LM, S.A., which requested a reduction in the VAT taxable base for unpaid invoices issued in 2022. However, the Tax Agency rejected these requests due to non-compliance with the formal requirements set out in Article 80.4 of the VAT Law and Article 24 of its implementing Regulation. Specifically, the authorities argued that the company had not initiated collection proceedings by legal or notarial means, as required under Article 80.4 to consider a debt uncollectible. Additionally, the requests were deemed to have been submitted beyond the three-month deadline for such adjustments. In some cases, the Agency also argued that the recipient was not a business or professional, or that the taxable amount (excluding VAT) was below the €300 threshold, thereby failing to meet the requirements of Article 80.4.A).

The taxpayer did not provide evidence of having met these requirements but instead focused its claims on alleging that the Spanish provisions were contrary to EU law and CJEU case law. It filed five administrative appeals, claiming that the Spanish rules were disproportionate and violated Article 90 of Directive 2006/112/EC, as well as the principles of neutrality, effectiveness, and the prohibition on unjust enrichment by the Administration.

First, TEAC, drawing on the case law of the CJEU and the Spanish Supreme Court, held that the requirement to initiate legal or notarial recovery proceedings is both proportionate and legitimate. It provides credible proof of both the uncollectibility of the debt and the creditor's genuine intent to collect payment, thus acting as a safeguard against potential fraud and contributing to proper tax collection. As such, this requirement is fully compatible with the VAT Directive and does not infringe the

principles of neutrality, proportionality, or effectiveness. TEAC reaffirmed that submitting a report by an independent third party is insufficient to prove non-payment—legal or notarial action is necessary.

TEAC emphasised that, while Article 80.4 of the VAT Law—interpreted in line with Article 90.1 of the VAT Directive—allows for taxable base reductions in the event of non-payment, the adjustment is conditional on strict formal requirements, including initiation of legal or notarial proceedings. This requirement is not disproportionate, as compliance depends solely on the taxable person's actions.

Regarding the one-year period from the chargeable event, plus three months for rectification and notification, TEAC confirmed that this is a lapse period (*caducidad*), not a limitation period (*prescripción*). Failure to comply with it entails loss of the right to modify the taxable base. The Court clarified that the four-year limitation period under the General Tax Law (LGT), which the taxpayer sought to rely on, does not apply here, as VAT base modifications are subject to the specific lapse period established in the VAT legislation.

TEAC also referred to the recent CJEU judgment of 29 February 2024 (Case C 314/22, REMI GROUP), which held that the existence of a lapse period is not contrary to EU law, provided that the principles of neutrality and effectiveness are respected. On this basis, TEAC considered that the three-month lapse period under Article 80.4.B) of the VAT Law is consistent with those principles and therefore in line with EU law.

As for the requirement that the debtor must be a business or professional, or otherwise that the taxable amount exceeds €300, TEAC justified this condition on operational and tax control grounds. The Court stated that the €300 threshold for bad debts where the recipient is not a business or professional is also compatible with EU law.

Lastly, TEAC considered the possibility of directly applying Article 90.1 of the VAT Directive, which allows for taxable base reductions in the event of non-payment. According to settled CJEU case



law, this provision meets the criteria for direct effect and can be invoked by taxpayers when not properly transposed into national law. However, this is only possible if the national provision cannot be interpreted in conformity with EU law. In this case, TEAC concluded there was no contradiction between the national rule and the VAT Directive, and therefore the Directive could not be applied directly to override Spanish law.

In conclusion, TEAC dismissed the taxpayer's claims and upheld that taxable base adjustments due to bad debts can only be made if all formal requirements established in the VAT Law are met. This resolution reaffirms and consolidates the administrative doctrine on the formal conditions required to adjust the VAT taxable base in cases of uncollectible debts

## V. BINDING RULINGS

### V0981-25: Rectification of Consultation V0175-25 concerning the Veri\*factu Regulation

On 10 June 2025, the Directorate General for Taxation (DGT) issued a binding ruling that replaces the conclusion reached in the previous consultation V0175-25, which analysed the obligation to issue invoices and the application of Royal Decree 1007/2023 (Veri\*factu Regulation) by VAT taxable persons subject to the Special Surcharge Regime and who determine their income under the Personal Income Tax through direct estimation.

In consultation V0175-25, it was concluded that such taxpayers were not generally required to issue invoices for the transactions carried out, and therefore, the Veri\*factu Regulation and the invoicing software obligations would not apply to their operations.

In this new binding consultation, the DGT clarifies that, in accordance with Article 26 of the Invoicing Regulation, taxable persons are required to issue invoices, even if they are subject to the special surcharge regime. Therefore, if these taxable persons issue invoices using computerised systems, they must use software that complies with the requirements set out in the Veri\*factu Regulation.

The company acting as the invoicing software developer is also subject to the provisions of Royal Decree 1007/2023 regarding its activities related to the development and marketing of such systems and must submit a responsible declaration certifying that the system complies with the required specifications.

### V0559-25: VAT treatment of customer loyalty services involving rewards

In consultation V0559-25, the DGT analyses the VAT treatment of transactions carried out by an entity that provides promotional services to third-party companies (sponsoring entities) through the management of a loyalty programme aimed at the clients of those entities (the "members"). Under the programme, members are given a card free of charge through which they accumulate points for purchases at participating sponsors' establishments, later redeemable for rewards acquired by the consulting company from various suppliers.





The rewards are delivered by the consulting company in its own name to the members, although the cost of the rewards is borne by the sponsoring entities. The rewards can vary in nature and may include travel.

The DGT begins by referring to CJEU case law on loyalty schemes (C-53/09 and C-55/09), where the Court held that the sale of goods or services that give rise to point accumulation, on the one hand, and the redemption of those points for rewards, on the other, are separate transactions. Accordingly, the DGT concludes that the delivery of rewards previously acquired by the consultant forms part of the services included in a loyalty programme, including reward delivery. Therefore, the delivery of such rewards constitutes a VAT-taxable transaction regardless of who bears the cost.

Regarding the taxable base, it will be the total consideration received by the consultant for delivering the rewards to the clients, which in this case is the acquisition cost and, if applicable, any additional margin agreed with the sponsors or the final customer.

As for advance payments made by the sponsors to the consultant to cover the cost of the rewards, the DGT notes that at the time of the payment the specific good or service to be delivered as a reward is not yet known. Therefore, based on previous rulings and CJEU case law, if the essential elements to determine the VAT chargeable event are not known at the time of the advance payment, then VAT does not become chargeable, under Article 75.2 of Law 37/1992.

Finally, the DGT examines the deductibility of input VAT incurred by the consultant in acquiring the rewards. Under Article 94 of the VAT Law, these amounts are deductible. However, where the rewards consist of travel, the special travel agency scheme will apply, provided that the services involve a single principal service of accommodation or transport, or a combination thereof with related services. In such cases, VAT on goods or services acquired for the travel (that directly benefit the traveller) is not deductible.

### V0569-25: Concept of agency services in one's own name and on behalf of others, and the characteristics of a disbursement (suplido)

Binding consultation V0569-25 analyses the activity of a public entity responsible for selling admission tickets to a natural park, both to final consumers and travel agencies.

The DGT first clarifies that, in general, agency services can be performed either in one's own name or on behalf of another, so both cases must be distinguished:

- ▶ If travel agencies act on behalf of another party in selling tickets, then the natural park provider is considered to render the service directly to the final customer, and the agency renders an intermediation service to the provider, the customer, or both.
- ▶ If travel agencies act in their own name when selling tickets, they are deemed to have received and supplied the admission service themselves. In such case, there are two separate services: one from the park provider to the agency, and another from the agency to the ticket purchaser.

According to Article 20.One.14 of the VAT Law, access to natural parks is VAT-exempt when provided in the provider's own name by a public entity or a private cultural establishment of a social nature. To be considered as such, the following requirements must be met:

1. Non-profit status, and any profits must be used for exempt activities of the same nature.
2. Directors, trustees, or legal representatives must serve on a voluntary basis and have no interest in the organisation's financial results.
3. Shareholders or members, and their spouses or relatives up to the second degree, may not be the primary recipients of the exempt services or enjoy special conditions in their provision.

Based on the consultation, the DGT assumes that the entity meets these conditions, and therefore, the sale of tickets to travel agencies is subject to and exempt from VAT. However, this exemption does not apply to resale of the tickets by agencies acting in their own name, as they are not public entities or qualifying private establishments.

The possibility of treating the ticket resale by agencies as a disbursement (*suplido*) is also considered. Article 78.Three.3 of the VAT Law allows certain payments not to be included in the taxable base if:

- ▶ They are made in the name and on behalf of the client,
- ▶ There is an express mandate from the client, and
- ▶ The actual amount of such expenses is proven with admissible evidence.
- ▶ The intermediary may not deduct any VAT that may have been charged on those expenses.

The DGT concludes that, based on the information provided, the required conditions for considering the ticket amount a disbursement (*suplido*) are not met.

### **V0349-25: Dissolution of joint ownership over a publicly subsidised dwelling with monetary compensation**

Binding consultation V0349-25, issued by the Directorate General for Taxation (DGT), analyses the tax treatment of the dissolution of joint ownership over a publicly subsidised dwelling, where the co-owners are two individuals and one of them is awarded the entire property while compensating the other in cash. The agreed compensation does not exceed the reference value set by the General Directorate of the Cadastre.

Regarding the Transfer Tax and Stamp Duty (ITPAJD), the DGT distinguishes between dissolutions with and without excess allocation. If the awarded share matches the co-owner's ownership percentage, there is no transfer of ownership as such, and the transaction is only subject to the stamp duty component, provided that the requirements of Article 31.2 of the ITPAJD Law are met.

Conversely, when one of the co-owners receives more than their share, there is an excess allocation, which may be either for consideration or gratuitous, depending on whether compensation is paid. In this case, the excess is compensated in cash and the property is deemed indivisible, so the exception in Article 7.2.B) of the ITPAJD Law applies. Therefore, the transaction is not subject to the transfer tax modality but only to stamp duty. The person liable for payment is the co-owner who acquires the property.

The taxable base for stamp duty will be the declared value, which may not be lower than the reference value set by cadastral regulations, unless the taxpayer proves that this value is detrimental. In that case, a rectification of the self-assessment may be requested through the appropriate procedure. The



General Directorate of the Cadastre is the competent authority to determine this value, which must reflect the market value and may be challenged as provided by law.

From a Personal Income Tax (IRPF) perspective, the dissolution of co-ownership does not trigger a capital gain or loss when the awarded share matches the co-owner's original ownership. However, if one receives more than their share and compensates the other, as in this case, there is a capital alteration for the transferring co-owner. The gain or loss is calculated as the difference between the acquisition value and the transfer value.

The transfer value, for IRPF purposes, will be the amount actually paid, provided it is not lower than the market value. If it is, the market value prevails. Therefore, the reference value is not considered for IRPF purposes; rather, the higher of the market value or the actual amount received applies.

In conclusion, if the property is indivisible, is awarded to a single co-owner, and compensation is paid in cash, the transaction is not subject to transfer tax but is subject to stamp duty. However, a capital gain or loss may arise for the transferring co-owner under IRPF rules, based on the real or market value received.

### **V0435-25: Acquisition of a publicly subsidised dwelling below the cadastral reference value**

La Binding consultation V0435-25, issued by the Directorate General for Taxation, analyses the case of a taxpayer acquiring a publicly subsidised dwelling at the maximum price authorised by the Administration, which is lower than the cadastral reference value of the property. The question is how to determine the taxable base for Transfer Tax and Stamp Duty (ITPAJD) in such cases.

According to Article 10 of the ITPAJD Law, for real estate, the taxable base is determined by the cadastral reference value, unless the declared value or agreed price is higher. The reference value is an estimate of market value published annually by the General Directorate of the Cadastre, based on prices reported by notaries in property transactions.

The fact that the property is subject to an administrative regime imposing a maximum sale price—such as in the case of publicly subsidised housing—does not prevent application of the reference value as the taxable base. Even if the maximum price could reflect the market value, if the cadastral reference value is higher, it must prevail, as there is no legal exception in these cases.

However, a taxpayer who considers that the reference value does not reflect the true market value may challenge it by requesting rectification of the self-assessment or through administrative appeals. In such cases, the Tax Administration must request a binding report from the Cadastre to confirm or revise the value, based on the documents and arguments submitted.

In any case, until the challenge is resolved, the taxpayer must self-assess using the reference value as the taxable base. It may only be replaced if sufficient evidence proves that it does not reflect the market value. It is also important to clarify that the so-called “cadastral reference value” is not a term recognised by law; the correct term is simply “reference value”, which should not be confused with the cadastral value.

In short, when the cadastral reference value is higher than the maximum authorised price of a publicly subsidised dwelling, the taxable base for ITPAJD will be the reference value. The taxpayer may challenge it, but must self-assess based on that value unless and until an administrative resolution is issued.

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