

**VAT in the European Community**  
**APPLICATION IN THE MEMBER STATES,**  
**FACTS FOR USE BY**  
**ADMINISTRATIONS, TRADERS,**  
**INFORMATION NETWORKS, ETC.**

**Note**

**This document is a compilation of basic information on the application of VAT arrangements in the Member States which has been obtained from the tax authorities concerned.**

**The sole purpose of distributing details of national provisions is to create a work tool. In no way does this document reflect the views of the Commission of the European Communities. Nor does it signify agreement with the legislation considered.**

# SPAIN

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## GENERAL INFORMATION

### **1. IF A FOREIGN TRADER WANTS TO OBTAIN INFORMATION ABOUT YOUR VAT SYSTEM, WHOM SHOULD HE CONTACT? (ADDRESS, TELEPHONE, FAX, EMAIL)**

Foreign traders who want to obtain general information about VAT in Spain may contact the following entities:

a) Subdirección General de Información y Asistencia Tributaria del Departamento de Gestión de la Agencia Estatal de Administración Tributaria.

c/ Infanta Mercedes, 37

28071 Madrid

Tel. (34) 91 583 89 76

FAX (34) 91 5838948

Apartado de Correos 993.

28080 Madrid

Tax information is likewise available by telephone at: 901 33 55 33. However, this number may not be used from outside Spain.

b) Under Article 107 of the General Taxation Act, there is a more formal way of obtaining information on the tax status of a transaction or set of transactions whereby taxable persons (queries formulated by lawyers or legal consultants are not permitted unless on behalf of a taxable person) may send their queries to:

Subdirección General de Impuestos sobre el Consumo.

Dirección General de Tributos

c/ Alcalá, 5

28014 Madrid

### **2. WHAT IS THE ADDRESS OF THE NATIONAL TAX ADMINISTRATION WEBSITE? WHAT TYPE OF INFORMATION ON VAT IS AVAILABLE ON THAT WEBSITE (GENERAL INFORMATION, LEGISLATION, CONTACT POINTS, FORMS, ETC.)? AND IN WHICH LANGUAGE(S)?**

The address of the Spanish Tax Administration website is: [www.agenciatributaria.es](http://www.agenciatributaria.es).

Here you will find Spanish rules and legislation, frequently asked questions regarding different taxes, Orders issued by the Tax Directorate-General, etc. It is also possible to obtain the different forms currently in use in Spain, download help programmes, submit returns electronically, etc.

In the “Non-residents” portal useful information may also be found in Spanish (and in some cases in English, French and German) regarding laws applicable to non-residents.

### **3. WHERE IS IT POSSIBLE TO FIND NATIONAL VAT LEGISLATION AND REGULATIONS? IN WHICH LANGUAGE(S) ARE THEY AVAILABLE?**

VAT legislation may be found at [www.agenciatributaria.es](http://www.agenciatributaria.es), selecting “Normativas y criterios interpretativos” (Regulations and interpretation criteria), “Normativa tributaria y aduanera” (Tax and customs regulations), “Impuestos” (Taxes), and “Impuesto sobre el Valor Añadido” (Value Added Tax).

These legal instruments and questions and answers regarding tax issues are likewise available through the Ministry of Economy and Finance website ([www.minhac.es](http://www.minhac.es)) under the heading *Dirección General de Tributos* (tax directorate-general).

## **VAT REGISTRATION OF FOREIGN TRADERS**

### **4. WHAT ARE THE CIRCUMSTANCES GOVERNING THE NEED TO BE REGISTERED FOR VAT?**

All traders or professionals subject to VAT because of the nature of their transactions in the territory as defined for VAT purposes (mainland and Balearic Islands) must enrol on the tax register by submitting a declaration (Form 036) specifying the VAT scheme under which they will pay tax.

In the case of foreign traders, Spanish law makes distinctions based on the manner in which they operate in Spain:

- Traders who have what under Spanish law is referred to as “a permanent establishment in Spain” (i.e. an office in Spanish territory) must apply for an identification number at the appropriate office or branch of the State Tax Administration Agency (AEAT) responsible for the place of establishment.
- Traders who have no permanent establishment must submit their application directly (or through their tax representative, if appropriate) at the AEAT office or delegation responsible for the area where they intend to operate.

Traders who do not reside in Spain may apply for their identification number at the consulate or representative office of Spain in their country of residence or origin.

There are no exemptions from the obligation to register for VAT based on turnover thresholds. However, there are exemptions in the following cases:

- (a) persons who carry out only transactions for which there is no right to deduct VAT or who engage only in activities covered by the special agricultural scheme if their intra-Community acquisitions are exempt from VAT;
- (b) persons who engage solely in the occasional delivery of new means of transport that are exempt from VAT;

- (c) persons who are not established in the VAT territory and engage exclusively in operations in which the taxable person is the person to whom the goods are supplied or the supplier of the services; and
- (d) persons who are not established in the VAT territory and engage exclusively in triangular operation as intermediaries.

There is no provision for voluntary VAT registration.

**5. WHAT ARE THE SITUATIONS WHERE REGISTRATION IS UNNECESSARY BECAUSE THE RECIPIENT OF THE GOODS OR SERVICES IS LIABLE FOR THE TAX? IN SUCH SITUATIONS, IS IT POSSIBLE TO REGISTER ON A VOLUNTARY BASIS?**

Foreign traders who are not established in the territory where Spanish VAT is applicable and who engage in operations in that territory do not have to register, as they are not subject to that tax if the recipient of the taxable transactions is a trader or professional.

The foregoing is applicable except under the following circumstances:

- (a) when the recipient traders or professionals are not established in Spanish VAT territory either and the services supplied differ from those stipulated in Articles 70(1)(7), 72, 73 and 74 of Law 37/1992;
- (b) when the goods supplied come within the meaning of Article 68(3) and (5) of Law 37/1992.

If the trader not established in the territory is not a taxable person, he may not register for VAT.

**6. WHOM SHOULD A FOREIGN TRADER CONTACT TO GET REGISTERED FOR VAT? (GIVE DETAILS OF THE DEPARTMENT, INCLUDING ADDRESS, TELEPHONE AND FAX EMAIL...)**

Form 036, which can be acquired at any AEAT office or delegation or downloaded from the AEAT website, should be signed and submitted. In the case of persons or entities not resident in Spain or not established within the territorial area where VAT is applicable should submit form 036 at the AEAT office or delegation where their representative is registered for tax purposes, or if they have no representative, at the office or delegation where they operate. The address, telephone and fax, email address, etc. can be found on the main page of the AEAT's Electronic Office by clicking on the link "Direcciones y teléfonos" (Addresses and telephone numbers). This calls up another screen where you should click on "Delegaciones y Administraciones".

Persons possessing a user's certificate can submit their registration application on-line. To do this, log on to the AEAT Electronic Office and complete form 036, following the instructions provided. You will be advised of any errors that may be detected. Once the form is completed and any errors corrected, you can submit the application electronically. If the transmission is successful, the reply from the tax office will include an electronic code confirming that the application has been submitted and the date and time of submission.

**7. PLEASE DESCRIBE THE DETAILED PROCEDURES (INCLUDING NECESSARY DOCUMENTS) FOR ISSUING VAT IDENTIFICATION NUMBERS, SPECIFICALLY TO FOREIGN TRADERS.**

For the purposes of Value Added Tax, , the identification number for persons or entities engaging in intra-Community transactions will be established in accordance with the General Regulation on management and inspection procedures (RD 1065/2007). It will be preceded by the prefix ES in accordance with international standard ISO-3166 alpha 2. This number will be assigned when the applicant requests inclusion in the Register of intra-Community traders, as laid down for application for registration or modification of registration particulars.

The tax administration (AEAT) may refuse to assign this number in the cases cited in Articles 24(1) and 146(1)b) of the above-cited Regulation. If the AEAT has not issued a decision in three months, this means that the application for a number has been refused.

The tax identification number for VAT purposes will be assigned to the following persons or entities:

(a) Traders and professionals who provide services or make intra-Community purchases of goods that are subject to VAT, even if the goods acquired in such intra-Community transactions are used in business or professional activities abroad.

(b) Legal persons not acting as traders or professionals where they make intra-Community purchases of goods that are subject to VAT as provided in Articles 13(1) and 14 of the VAT law.

Notwithstanding the above, the tax identification number for VAT purposes will not be assigned to the following persons or entities:

(a) Taxable persons engaging solely in operations that are not wholly or partly deductible or engaging solely in activities subject to the special scheme for agriculture, livestock and fisheries, or legal persons not acting as traders or professionals, where intra-Community purchases of goods made by such persons are not subject to VAT as provided in Article 14 of the VAT Act.

(b) Persons indicated in point (a) and persons not acting as traders or professionals when making intra-Community purchases of new means of transport.

(c) Persons coming under Article 5(1)(e) of the VAT Act (No 37/1992 of 28 December 1992).

(d) Traders or professionals not established in the territory where VAT is applicable engaging solely in transactions in respect of which they are not taxable persons in that territory, as provided for in points 2, 3 and 4 of Article 84(1) of the Value Added Tax Act.

(e) Traders or professionals not established in the territory where VAT is applicable who engage solely in intra-Community purchases and subsequent supplies of goods in that territory referred to in Article 26(3) of the Value Added Tax Act.

In short, foreign traders wishing to acquire a VAT identification number must apply for registration with the Registry of Intra-Community Traders, which can be done by submitting the registration form, Form 036. No additional documentation is required just to apply for registration, but that is without prejudice to the procedure followed subsequently by AEAT, which may accept or refuse registration.

## **THRESHOLDS**

### **8. WHICH THRESHOLD DO YOU OPERATE AS REGARDS INTRA-COMMUNITY DISTANCE SELLING UNDER ARTICLE 34 OF THE VAT DIRECTIVE (2006/112/EC)?**

€35 000 (Article 68(3)(4) of the VAT Act (No 37/1992 of 28 December 1992).

### **9. WHICH THRESHOLD DO YOU OPERATE AS REGARDS ACQUISITIONS BY NON-TAXABLE LEGAL PERSONS OR EXEMPT PERSONS UNDER ARTICLE 3(2), SECOND PARAGRAPH, OF THE VAT DIRECTIVE (2006/112/EC)?**

€10 000 (Art. 14(2) of the VAT Act (No 37/1992 of 28 December 1992).

## **APPOINTMENT OF TAX REPRESENTATIVES BY FOREIGN (NON-EU) TRADERS**

### **10. WHAT ARE THE SITUATIONS IN WHICH THE APPOINTMENT OF A TAX REPRESENTATIVE IS OBLIGATORY?**

The appointment of a tax representative is obligatory if the foreign trader is established in the Community or in a State where there are no mutual assistance instruments comparable to those existing at Community level. However, it is not necessary to appoint a tax representative in Spain if the trader is established in the Canary Islands, Ceuta or Melilla.

It is also obligatory for traders or professionals established in third countries to appoint a tax representative who is a resident in Spanish territory where the tax is applicable, if they intend to exercise their right to be reimbursed for Value Added Tax which they have paid in Spanish territory where the tax is applicable.

**11. WHAT ARE THE CONDITIONS GOVERNING THE APPOINTMENT OF A TAX REPRESENTATIVE?**

- Any natural or legal person with legal domicile in Spanish territory where VAT is applicable may be appointed as a tax representative.
- The representative must be appointed prior to engaging in transactions subject to the tax. The Administration must be duly informed of the appointment of a representative.

**12. WHAT ARE THE RIGHTS AND OBLIGATIONS OF A TAX REPRESENTATIVE?**

Tax representatives must comply with the duties imposed on the taxable persons they represent. However, they are not answerable to the Ministry of Finance. It is the non-resident taxable person being represented who bears this responsibility.

**13. WHAT ACTION CAN YOU TAKE IN THE EVENT OF FAILURE BY A TRADER IN ANOTHER COUNTRY TO DESIGNATE A TAX REPRESENTATIVE IN YOUR TERRITORY?**

Under Spanish law, failure to comply with the obligation to designate a tax representative constitutes a simple infringement of the tax law.

**14. IS IT NECESSARY TO SET UP A BANK GUARANTEE?**

No

**APPOINTMENT OF TAX REPRESENTATIVES BY FOREIGN TRADERS ESTABLISHED IN THE EU**

**15. IS IT POSSIBLE TO APPOINT A TAX REPRESENTATIVE?**

Foreign traders established in the EU in the Canary Islands, Ceuta or Melilla may, if they so desire, appoint a tax representative in Spain.

**16. WHAT ARE THE CONDITIONS GOVERNING THE APPOINTMENT OF A TAX REPRESENTATIVE?**

See the response to question 11.

**17. WHAT ARE THE RIGHTS AND OBLIGATIONS OF A TAX REPRESENTATIVE?**

See the response to question 12.

**18. ARE THERE SITUATIONS WHERE IT IS OBLIGATORY TO SET UP A BANK GUARANTEE?**

No

## **INVOICING**

### **RULES ABOUT INVOICING**

**19. WHERE CAN THE RELEVANT RULES (LAWS, REGULATIONS, INSTRUCTIONS, GUIDELINES...) BE FOUND?**

www.agenciatributaria.es: “Normativa y criterios interpretativos/Regulations and interpretation criteria”, “Normativa tributaria y aduanera/Tax and customs regulations”, “Impuestos/Taxes”, “Impuesto sobre el Valor Añadido/Value Added Tax”, “Normas básicas del IVA/Basic rules of VAT”, Royal Decree 1496/2003 of 28 November 2003 approving the regulation governing invoicing obligations.

### **ISSUANCE OF INVOICES**

**20. CASES WHERE AN INVOICE NEEDS TO BE ISSUED**

Article 2 of Royal Decree 1496/2003 of 28 November 2003 approving the regulation governing invoicing obligations provides that:

Traders or professionals are required to issue an invoice and a copy thereof for goods and services that they supply in the course of their business, including those not subject to VAT or that are subject to VAT but exempt, under this regulation and with no exceptions other than the ones provided therein. This obligation likewise applies to traders or professionals registered with special VAT schemes.

An invoice and a copy thereof must also be issued for payments received prior to the supply of goods or services subject to this obligation in accordance with the above paragraph, except for supplies of goods that are exempt from VAT under Article 25 of the VAT Law No 37/1992 of 28 December 1992).

An invoice and a copy thereof must always be issued for the following transactions:

(a) Transactions where the recipient is a trader or professional acting in that capacity, irrespective of the tax regime with which the trader or professional conducting the

transaction is registered, and any other transactions for which the recipient requires one in order to exercise any right of a fiscal nature.

(b) Supplies of goods to another Member State as referred to in Article 25 of the VAT Act.

c) Supplies of goods as defined in Article 68(3) and (5) of the VAT Act where they are deemed to have been performed in the territory where VAT is applicable according to the rules set out in the cited provision.

d) Supplies of goods dispatched or carried outside the European Community as defined in Article 21(1) and (2) of the VAT Act, except for those performed in tax-free shops as defined in paragraph 2(B) of the said Article.

e) Supplies of goods that require installation or assembly before they can be used, as defined in Article 68(2)2) of the VAT Act.

f) Supplies to legal persons not acting as traders or professionals, whether or not established in the territory where VAT is applicable, or to public administrations as defined in Article 2 of the Public Administrations and Common Administrative Procedure (Legal Regime) Act, Law 30/1992, of 26 November 1992.

## **21. WHAT ARE THE RULES ON CORRECTIVE INVOICES (CREDIT / DEBIT NOTES)?**

According to Article 13 of Royal Decree 1496/2003 of 28 November 2003:

1. A corrective invoice or document serving as an invoice must be issued in cases where the original invoice or document serving as an invoice does not meet one or more of the requirements laid down in Articles 6 or 7.

2. The issue of a corrective invoice, or document serving as an invoice as the case may be, shall likewise be compulsory in cases where the amounts of tax have been wrongly calculated or have been calculated in circumstances which according to Article 80 of the VAT Act warrant amendment of the tax base.

However, where the amendment of the tax base is a consequence of the return of goods or containers and packages on the occasion of a later supply to the same recipient and an invoice or document serving as an invoice was issued for the transaction in which they were supplied, it shall not be necessary to issue a corrective invoice or document serving as an invoice; instead, the correction may be made in the invoice or document serving as an invoice issued for that supply and the value of the returned goods or containers and packages deducted from the value of the later transaction. The correction may be made in this way provided that the same tax rate is applicable to all the transactions, regardless of whether the result is positive or negative.

3. The corrective invoice or document serving as an invoice must be issued as soon as the party required to issue it is apprised of the circumstances requiring such issue as laid down in the foregoing sections, unless four years have elapsed since the tax became payable, or the circumstances referred to in Article 80 of the VAT Act arose, as the case may be.

4. The correction shall be made by issuing a new invoice or document serving as an invoice in which the identifying details of the invoice or document serving as an invoice are to be recorded. Corrections may be made to more than one invoice or document serving as an invoice in a single corrective document, provided that all the invoices or documents serving as invoices so corrected are identified. However, where the tax base is amended as a result of the granting of volume discounts or bonuses, and likewise in other cases where this is authorised by the AEAT's Tax Management Department, the corrected invoices or documents serving as invoices need not be identified and it shall suffice to state the period to which they refer.

5. The invoice or document serving as an invoice must meet the respective requirements laid down in Articles 6 and 7. Also, the document shall indicate that it is a corrective document and shall state the reason for the correction.

When a corrective invoice is issued, the particulars cited in Article 6(1)f), g) and h) shall reflect the correction that has been made. In particular, the details regulated in paragraphs f) and h) of Article 6(1) may be entered, either by direct indication of the amount of the correction whether negative or positive, or else by entering the details exactly as they are after the correction; in the latter case the amount of the correction must likewise be stated.

When it is a document serving as an invoice that is issued, the particulars referred to in Article 7(1)c) and d) shall reflect the correction that has been made, either by direct indication of the amount of the correction whether negative or positive, or else by entering the details exactly as they are after the correction; in the latter case the amount of the correction must likewise be stated.

If the corrective document is issued due to a correction of the tax payable and this requires the submission of an extemporaneous return or can be substantiated by submission of an application for reimbursement of undue payments, it must state the return period or periods during which the transactions were carried out.

6. Only invoices issued for one of the reasons contemplated in sections 1 and 2 may be considered corrective invoices. In particular, invoices issued in place of documents serving as invoices issued previously shall not be considered corrective provided that the documents serving as invoices originally issued meet the requirements laid down in Article 7.

## **22. WHAT IS THE TIME LIMIT FOR ISSUING INVOICES?**

Article 9 of Royal Decree 1496/2003 provides:

1. Invoices or documents serving as invoices must be issued at the time the transaction is carried out.

However, where the recipient of the transaction is a trader or professional acting as such, they must be issued within one month of that time.

In any case, invoices or documents serving as invoices must be issued before the 16th of the month following the tax assessment period during which the transactions were carried out.

2. For the purposes of this regulation, transactions shall be deemed to have been carried out on the date when the tax on such transactions became due.

### **23. WHAT ARE THE RULES FOR SUMMARY INVOICING?**

According to Article 11 of Royal Decree 1496/2003:

Different transactions carried out on different dates with the same customer may be included in a single invoice provided that they were carried out in the same calendar month.

Such invoices must be issued at the latest on the last day of the calendar month in which the transactions to which they refer were carried out. However, where the customer is a trader or professional acting as such, the invoice may be issued within one month of that day.

In any case, such invoices must be issued before the 16th of the month following the tax assessment period during which the transactions were carried out.

The terms of the foregoing paragraphs apply equally to the invoices referred to in Article 2(3) provided that the transactions concerned were carried out by the same supplier and in the same calendar month.

### **24. WHAT ARE THE CONDITIONS IMPOSED ON SELF-BILLING?**

Article 2(3) Royal Decree 1496/2003 provides.

Taxable persons as defined in Articles 84(1)2) and 3) and 140(5) of the VAT Act must issue an invoice in all cases for transactions in which they are the recipients of supplies where according to these provisions they are liable to pay VAT on them.

This invoice is to be attached to the accounting voucher for each transaction and must contain the particulars cited in Article 6 of this Regulation.

For the purposes of this Regulation, an accounting voucher shall be any document that serves as the medium for whatever entry by which the transaction has to be recorded in the accounts.

Article 6 lists the particulars required in an invoice and regulates certain special conditions in respect of self-billing. Point 1 provides that:

All invoices and copies thereof must contain the particulars or requirements listed below, without prejudice to particulars or requirements that may be compulsory for other purposes or to the possibility of including other elements:

(a) Number, and series number where applicable. Invoice numbering must be consecutive within each series.

However, the following invoices must be issued in specific series in all cases:

1. Invoices referred to in Article 2(3) (self-billing).

(...)

(c) Full name and address or trade name of the person required to issue the invoice and the recipient of the transactions.

In the cases referred to in Article 2(3), the particulars to be entered shall be those of the taxable person to whom the goods or services are supplied. The invoice must also show the particulars of the supplier of the goods or services.

(d) Tax identification number

In the cases referred to in Article 2(3), the tax identification number to be entered shall be that of the taxable person to whom the goods or services are supplied. The invoice must also show the particulars of the supplier of the goods or services.

(e) Domicile of the person required to issue the invoice and the person for whom the transactions were carried out.

In the cases referred to in Article 2(3), the tax identification number to be entered shall be that of the taxable person to whom the goods or services are supplied. The invoice must also show the particulars of the supplier of the goods or services.

## **25. IS THERE ANY SPECIFIC RULE IN RELATION TO OUTSOURCING OF INVOICES TO A PERSON WHO IS ESTABLISHED OUTSIDE THE EU?**

Article 5(3) and (4) of RD 1496/2003 provide that:

The obligation to issue invoices may be discharged by traders or professionals or VAT-liable persons by engaging third parties to issue the requisite invoices or documents serving as invoices.

Where the recipient of the transaction or the third party issuing the invoices or documents serving as invoices is not established in the European Community - unless established in the Canary Islands, Ceuta or Melilla or in a country with which there is a legal instrument regarding mutual assistance whose scope is similar to the one provided for in Council Directive 76/308/EEC of 15 May 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties, and Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, for certain specific taxes on consumption and taxes on insurance premiums, and by Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92 -

invoices or documents serving as invoices may only be issued by the person for whom the transactions were carried out or by third parties duly authorised by the AEAT.

## **CONTENT OF INVOICES**

### **26. UNDER WHAT CONDITIONS MUST THE CUSTOMER'S VAT NUMBER BE SHOWN ON THE TAX INVOICE?**

Article 6 of RD 1496/2003, which regulates the content of invoices, provides that:

1. All invoices and copies thereof must contain the particulars or requirements listed below, without prejudice to particulars or requirements that may be compulsory for other purposes or to the possibility of including other information:

(...)

(d) Tax identification number assigned by the Spanish administration, or by another Member State of the European Community as the case may be, under which the transaction was carried out by the person required to issue the invoice.

It shall likewise be compulsory to include the tax identification number of the recipient in the following cases:

1. Supply of goods exempt under Article 25 of the VAT Act to another Member State.
2. A transaction in which the recipient is liable for the VAT payable on it.
3. Transactions deemed to be carried out in the territory where VAT is applicable if the trader or professional required to issue the invoice is considered to be established in that territory.

In the cases referred to in Article 2(3), the tax identification number to be entered shall be that of the taxable person to whom the goods or services are supplied. The invoice must also show the identification number of the supplier of the goods or services.

### **27. ARE THERE ANY OTHER SPECIFIC RULES IN RELATION TO THE CONTENT OF THE INVOICE?**

Specific cases are regulated in Royal Decree 1496/2003 of 28 November 2003 approving the regulation governing invoicing obligations.

## **ELECTRONIC INVOICING**

**28. AS REGARDS INVOICES SENT WITH ADVANCED ELECTRONIC SIGNATURES, IS IT OBLIGATORY TO USE QUALIFIED CERTIFICATED AND SECURE SIGNATURE CREATION DEVICES? IF SO, PLEASE GIVE DETAILS.**

Article 17 of Royal Decree 1496/2003 provides that:

The obligation to send invoices or documents serving as invoices may be discharged through any medium, and in particular by electronic media, provided that in such case the recipient has expressly consented thereto and the electronic media used guarantee the authenticity of the source and the integrity of the contents.

For these purposes electronic sending means the transmission or supply to the recipient, by means of electronic processing equipment, including numeric compression and data storage, using telephone, radio, optical media or other magnetic media.

Article 18 of the same Royal Decree states that:

For the purposes of Article 17, the authenticity of the source and the integrity of the contents of invoices or documents serving as invoices that have been sent by electronic media must be accredited in one of the following ways:

- a) By means of an advanced electronic signature as provided for in Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Commission of 13 December 1999 on a Community framework for electronic signatures, based on a qualified certificate and created by means of a secure signature creation device as provided for in Article 2(6) and (10) of the said Directive.

(...)

Article 2 of Order EHA/962/2007 of 10 April 2007 implementing certain provisions regarding electronic invoicing and storage of invoices contained in Royal Decree 1496/2003 of 28 November 2003 approving the regulation governing invoicing obligations, which regulates the sending of invoices or documents serving as invoices, provides that:

1. In accordance with Article 17 of the Regulation governing invoicing obligations, the obligation to send invoices or documents serving as invoices may be discharged by electronic media which guarantee the authenticity of the source and the integrity of the contents, provided that the recipient has consented thereto.

Such consent may be expressly given by any means, oral or written. At any time the addressee receiving electronic invoices or documents serving as invoices may advise the supplier that he wishes to receive them in hard copy. In such a case, after receiving such advice the supplier must respect the customer's right and proceed thereafter in the manner requested.

The issue of documents on a particular medium, whether hard copy or electronic, shall not affect the medium whereby they are to be sent to the same recipient at a later time, or the medium whereby corrective invoices related to these, or duplicates of invoices sent previously, are to be sent.

2. For the purposes of Article 18(1)(a) of the regulation governing invoicing obligations, any qualified electronic signature shall be valid, a valid electronic signature being

defined in Article 3(3) of Law 59/2003 of 19 December 2003 on electronic signatures as any advanced electronic signature based on a qualified certificate and generated by means of a secure signature creation device.

3. Where the invoices or documents serving as invoices are sent electronically and the option used to guarantee the authenticity of their source and the integrity of their contents is a qualified electronic signature system as provided for in Article 18(1)(a) of the regulation governing invoicing obligations, the electronic signature applied shall be the one derived from the use of the document issuer's certificate, even if the latter is the recipient or a third party issuing on behalf of the person liable for the tax.

Copies of invoices issued electronically and sent to the traders or professionals carrying out the transactions, including where invoices are issued by the recipient or by a third party on behalf of the taxable person, shall contain electronic signatures satisfying the same criteria as set out in the foregoing paragraph.

4. Where an electronic invoicing system is based on electronic data interchange (EDI) agreements as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange between issuer and recipient as provided in Article 18(1)(b) of the regulation governing invoicing obligations, the electronic data interchange agreement between the parties must state precisely what media or procedures are implemented in the invoicing system to guarantee the authenticity of the source and the integrity of the contents of the documents exchanged.

5. Invoices and documents serving as invoices that are sent with electronic signatures for which the certificates have expired or been revoked or suspended at the time of issue shall not be considered to have been validly sent to or received by the recipients.

Article 3 of Order EHA/962/2007 of 10 April 2007, which regulates the authorisation of electronic invoicing systems in respect of taxpayers, provides that:

1. Where the system used by the issuer of electronic invoices to guarantee the authenticity of the source and the integrity of the contents of electronically-sent invoices or documents serving as invoices is not expressly identified in point (a) or (b) of Article 18(1) of the Regulation governing invoicing obligations, the person required to issue such invoices must apply for prior authorisation to AEAT's Director of the Department of Financial and Tax Inspection.

The application must state what means or media it is proposed to use to guarantee the authenticity of the source and the integrity of the contents of electronically-sent documents, so that those guarantees can be verified by the Tax Administration at any time subsequent to their sending during the time allowed for that purpose by the General Taxation Act.

2. The means or media used for control purposes are not a priori subject to any conceptual or technological restriction, but they must be detailed by the applicant and be available to the recipient or to a third entity acting as a trusted third party in the system, in which case that third entity must be identified in the application. These means or media must be accessible to the Tax Administration during the time allowed for that

purpose by the General Taxation Act so that it can verify the authenticity of the source and integrity of the contents of documents that are received.

Where the application submitted does not contain all the elements necessary for the legally required verification, the applicant may be required to remedy the defects within 10 days, with a warning that otherwise he will be deemed to have desisted with no further formality. Where the requirement to put the application in order is addressed in time but the defects cited are not deemed to have been remedied, the applicant will be advised that the application is refused pursuant to paragraph 4.

3. In order to carry out such verification, the Department of Financial and Tax Inspection may gather whatever supplementary information it judges necessary to check the accuracy of the information declared by the applicant and perform any additional checks that it may consider desirable.

4. Once compliance with the requirements laid down in this Order has been verified, the Director of the Department of Financial and Tax Inspection shall grant authorisation to issue electronic invoices using the system proposed by the applicant and shall assign that authorisation a reference code. This decision shall set out the conditions subject to which the authorisation has been granted. If it is not granted, the communication advising that the authorisation is refused must state the reason for such refusal. An appeal may be lodged with the Director-General of the AEAT against whatever decision is issued.

5. The Director of the Department of Financial and Tax Inspection shall decide on the application within six months. If for any reason verification should not have been completed or no express decision has been issued within that time, the lack of response by the administration shall be interpreted as a rejection of the application.

6. Application for the authorisation referred to in this Article may be made by traders or professionals or by any other person or entity required to issue invoices or documents serving as invoices who is established or resident in Spain.

**29. AS REGARDS INVOICES SENT BY ELECTRONIC DATA INTERCHANGE, IS AN ADDITIONAL SUMMARY DOCUMENT ON PAPER OBLIGATORY? IF SO, PLEASE GIVE DETAILS ABOUT ITS CONTENT AND PROCEDURE.**

No.

**30. DO YOU ALLOW INVOICES ISSUED PURSUANT TO ARTICLE 233(1), SECOND SUBPARAGRAPH, OF THE VAT DIRECTIVE (2006/112/EC) (“BY USING ANY OTHER ELECTRONIC MEANS”)? IF SO, SUBJECT TO WHAT CONDITIONS AND FORMALITIES?**

Article 18(1)(c) of Royal Decree 1496/2003 provides that invoices may be sent by electronic data interchange (EDI) as defined in Article 2 of Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange where the agreement regarding such interchange provides for the use of procedures that guarantee the authenticity of the source and the integrity of the data.

According to Article 2(4) of Order EHA/962/2007 of 10 April 2007, if an electronic invoicing system is based on an electronic data interchange (EDI) agreement, the

electronic data interchange (EDI) agreement between the parties must state precisely what media or procedures are implemented in the invoicing system to guarantee the authenticity of the source and the integrity of the contents of documents so interchanged.

### **31. ANY OTHER SPECIFIC RULE IN RELATION TO ELECTRONIC INVOICING**

The applicable regulations are:

- Article 18 of Royal Decree 1496/2003 of 28 November 2003 approving the regulation governing invoicing obligations.
- Order EHA/962/2007 of 2 April 2007 implementing the electronic invoicing and storage of invoices.
- AEAT Directorate-General Decision 2/2003 of 14 February 2003 on certain aspects of electronic invoicing.
- AEAT Decision of 24 October 2007 on the procedure for certification of digitisation software.

## **STORAGE OF INVOICES**

### **32. WHAT ARE THE RULES ON THE PLACE OF STORAGE OF INVOICES?**

The current rules are set out in Articles 19 to 23 of Royal Decree 1496/2003 of 28 November approving the regulation governing invoicing obligations.

### **33. IS PRIOR NOTIFICATION OF INVOICES STORED IN ANOTHER COUNTRY AN OBLIGATION? IF SO, PLEASE SPECIFY.**

Article 22 of Royal Decree 1496/2003 of 28 November 2003 provides that:

1. For the purposes of this chapter, the traders or professionals or taxable persons obliged to store invoices or documents serving as invoices may decide where this obligation is to be discharged, on condition that whenever requested to do so, they make all documentation or information thus stored available, without unwarranted delay, to any organ of the tax administration that is taking steps to verify their tax situation.
2. Where invoices are stored outside Spain, this obligation shall be considered to be validly discharged only if it is carried out by electronic means which guarantee on-line access and remote uploading and use of the documentation or information so stored by the tax administration.

Any traders or professionals or taxable persons wishing to discharge that obligation outside Spain must first notify the AEAT of their intention.

The Article also regulates the tax administration's access to invoices and documents serving as invoices.

Where the obligation of storage referred to in Article 19 is discharged by electronic means, any organ of the tax administration that is taking steps to verify the tax situation of the trader or professional or taxable person must be guaranteed on-line access to the documents so stored, and likewise the possibility of downloading and using them. This obligation must be discharged irrespective of where the documents are stored.

### **34. WHAT IS THE OBLIGATORY STORAGE PERIOD FOR INVOICES?**

According to Article 19 of RD 1496/2003 of 28 November 2003, traders or professionals must store the following documents for the period laid down in the General Taxation Act:

- (a) invoices and documents serving as invoices received;
- (b) copies or counterfoils of invoices issued pursuant to Article 2(1) and (2) and copies of documents serving as invoices that are issued;
- (c) invoices issued pursuant to Article 2(3) and accounting vouchers where applicable;
- (d) receipts as referred to in Article 14(1), the original to be held by the issuer and the copy by the owner of the undertaking;
- (e) supporting documents showing payment of import duty.

This obligation is also incumbent on traders or professionals registered with special VAT schemes and on persons who are not traders or professionals but are liable to pay VAT, although in the latter case it concerns only the documents cited in this paragraph.

Documents must be stored with their original contents, in order, and must comply with the time limits and other conditions laid down in this regulation.

Article 30 of the Commercial Code provides that:

1. Traders shall store all books, correspondence and vouchers relating to their business, duly ordered, for six years from the last entry in their books unless otherwise stipulated in general or special provisions.
2. Traders who have ceased trading are not exempt from the obligation referred to in the above paragraph, and if deceased their heirs shall be bound by that obligation. In the event of winding up, the obligation laid down in that paragraph shall fall to the company's liquidators.

All the books and documents concerning the undertaking must therefore be preserved for six years from the last book entry. This rule applies to both mandatory and voluntary books or records, as all remaining documentation concerning the business must be preserved. The period also applies if the business shuts down. If the company is wound up, the obligation of preservation falls upon the liquidators.

However, account shall be taken of the provision of Article 70 of the General Taxation Act (No 58/2003 of 17 December 2003) concerning the effects of the time-limit regarding the formal obligations in relation to other tax obligations of the principal, and also in relation to compliance with the tax obligations of other persons or entities and to the obligation to justify the source of data relating to transactions carried out in tax periods for which the limitation period has lapsed, which shall remain in force for the duration of the limitation period on the right to determine tax debts affected by the transaction concerned. In this connection Article 66 of the General Taxation Act provides that:

The following rights shall lapse after four years:

- (a) The Administration's right to determine tax liability by means of a tax assessment.
- (b) The Administration's right to demand the payment of tax liabilities determined by assessment or self-assessment.
- (c) The right to request rebates pursuant to the rules governing each tax, the return of undue payments and reimbursement of the cost of guarantees.
- d) The right to receive refunds under the rules governing each tax, the return of (undue payments and reimbursement of the cost of guarantees.

### **35. WHAT ARE THE SPECIFIC RULES ON STORAGE FORM AND POSSIBLE CONVERSIONS?**

Article 20 of Royal Decree 1496/2003 lays down that:

The documents referred to in Article 19 must be stored in such a way as to assure access to them by the tax administration, without undue delay.

In particular, this obligation may be discharged using electronic means. For these purposes electronic storage means storage by means of electronic processing equipment, including numeric compression and data storage using telephone, radio, optical media or other electromagnetic media.

According to Order EHA/962/2007 of 10 April 2007, the taxable person who issued the invoices must make sure that there are the necessary back-up copies and that all necessary technical measures and contingency plans are in place to guarantee the retrievability of computer files in the event of an accident or breakdown of the computer system where the electronic invoices or documents serving as invoices are stored.

A copy of an invoice or document serving as an invoice on paper means a document on the same medium and with the same format and contents as the original; it may contain some distinguishing mark such as the legend "copy". In the case of electronic invoices or documents serving as invoices, the copy is a file identical to the original. Where the original has been signed electronically, the copy refers to the original signed file.

The matrix of an invoice or document serving as an invoice, or a set of invoices or documents serving as invoices, means a structured set of data, tables, data base or file system that contain all the data contained in the invoices or documents serving as

invoices, along with programmes or applications that allow the issuer to generate invoices or documents serving as invoices and obtain copies and duplicates thereof.

The administration of storage of the issued documents referred to in Article 19 of the regulation governing invoicing obligations, and of the copies or matrixes of these documents, must be conducted in an orderly fashion so as to assure the legibility of such documents, copies or matrixes whatever their format or supporting medium, particularly when the latter is electronic, and where necessary the taxable person must, when so requested by the tax administration, facilitate the deciphering and decoding of any data that are not self-explanatory.

The taxable person must also furnish full access to such documents without undue delay, meaning that every document, copy or matrix stored may be consulted directly, irrespective of the supporting medium

Where a computer system is used to keep up and store issued documents and copies or matrixes of documents and hence these are on electronic media, whether in a local or a remote system, full access means the possibility of on-line access to data so that the documents can be viewed in full detail, a selective search can be made for any of the particulars that must be shown in books regulated by Royal Decree 1649/1992 of 29 December 1992 approving the Regulation of Value Added Tax, the original formats can be copied or downloaded on-line and any documents necessary for verification or documentation of fiscal control procedures can be printed on paper.

Recipients who are traders or professionals must store the documents referred to in Article 19(1) of the regulation governing invoicing obligations for the length of time provided in the General Taxation Act.

Where invoices or documents serving as invoices are received on electronic media with a qualified electronic signature or any other accepted or certified by the AEAT, the recipient must verify the signature and must have an internal control procedure in place which he judges to be suitable for enabling him to verify the validity of the certificates that are used.

The storage requirement applies to invoices and documents serving as invoices that are received in the original format and medium in which they were sent, unless the recipient opts for any of the authorised alternative forms of conversion provided for in Articles 7 and 8 of this Order, in which case storage shall refer to such formats and media.

Any conversion by the recipient of the medium or format of documents received other than those listed in Articles 7 and 8 of this Order shall result in a new document which will not be considered an original document.

The storage of invoices and documents serving as invoices received must be managed in an orderly fashion so as to assure their legibility whatever their format or supporting medium, particularly if the support is electronic, and where necessary the taxable person must, when so requested by the tax administration, facilitate the deciphering and decoding of any data that are not self-explanatory

The taxable person must furnish full access, without undue delay, to all invoices or documents serving as invoices that are received, meaning that each one can be accessed directly irrespective of the supporting medium.

When a computer system is used for the upkeep and storage of documents and hence these documents are kept on an electronic medium, whether in a local or a remote system, full access means the possibility of on-line access to data so that the documents can be viewed in full detail, a selective search can be made for any of the particulars that must be shown in the registers governed by Article 62 *et seq.* of Royal Decree 1649/1992 of 29 December 1992, the copying or downloading on-line, in their original formats, and printing out of any invoices or documents serving as invoices that are necessary for verification or documentation of tax control procedures.

Where the invoices or documents serving as invoices include electronic documents which were sent using an electronic signature as provided for in the foregoing articles of this Order as a means of guaranteeing the authenticity of their source and the integrity of their contents, in addition to the electronic invoices or documents serving as invoices received, the recipient must store the electronic signatures associated with each one unless these are included in the file containing each document. The recipient must also have in place signature-verification devices and an internal control procedure that adequately guarantees the validity of the electronic certificates used by the issuers, capable of detecting any that have expired or been revoked or suspended at the time of issue.

An issuer and/or recipient of electronic invoices or documents serving as invoices who is a third party acting on behalf of the taxable persons must comply with the above requirements. However, if these are complied with, he may make available to his clients computer applications that administer a repository of invoices and documents serving as invoices, issued or received as appropriate, along with the electronic signature generated or verified as provided in this Order and provide a message-authentication code associated with each document. This code shall provide the means of accessing the associated document in the repository and assure the accessing party that it complies with the requirements laid down in this Order.

In the foregoing case, a document printed on paper with this code is valid, as in Article 8, provided that the document and associated electronic signature are kept in such a repository, that there is a means of verifying the signature therein, and that the said electronic authentication code provides full access to the document.

Tax liable persons may produce certified digitised versions of original invoices, documents serving as invoices or any other documents that they have stored on paper.

The taxable person may dispense with paper originals of any invoices, documents serving as invoices or other documents that have been digitised in this way.

Certified digitisation means the technological process whereby photoelectronic techniques or scanners are used to convert the image contained in a paper document to a digital image conforming to any commonly used standard format at a level of resolution accepted by the AEAT.

This digitisation process must meet the following requirements:

(a) The digitisation process must be carried out by the taxable person or by a third-party provider of digitisation services on the former's behalf, in either case using digitisation software certified in the terms laid down in section 3 of this article.

(b) The digitisation process used must guarantee the production of a complete and accurate image of each digitised document and that digitised image must be authenticated by an electronic signature as laid down in the preceding articles of this Order, based on an electronic certificate installed in the digitisation system and called up by the certified digitisation software. This certification must correspond to the taxable person where the certified digitisation is carried out by him, or to the digitisation service provider if not. Whatever the case, each must have in place the procedures and controls necessary to guarantee the reliability of the certified digitisation process.

(c) The result of certified digitisation must be organised on the basis of a documentary data base, and a data register must be stored for every digitised document with all the fields required for upkeep of the record books listed in Article 62 *et seq.* of Royal Decree 1624/1992 of 29 December 1992, plus a field that contains the binary image of the digitised document or links to the file where the image is stored, in either case with the electronic signature for the document image as set out on point (b).

d) The person obliged to store such records must possess certified digitisation software with the following functionalities:

1. Database signature that guarantees the integrity of the data and images at the close of every assessment period for which the taxable person is obliged to keep records.

2. Full access to the data base without any undue delay. For these purposes full access means the possibility of on-line access to data so that the documents can be viewed in full detail, of a selective search for any of the particulars that must be shown in books governed by Article 62 *et seq.* of Royal Decree 1649/1992 of 29 December 1992, and of copying or downloading on-line, in their original formats, and printing out any invoices or documents serving as invoices that are necessary for verification or documentation of fiscal control procedures.

Developers wishing to certify digitisation software that complies with the stated requirements must complete the following formalities:

(a) Interested parties must apply to the AEAT's Director of the Departamento de Informática Tributaria (Tax IT Department); the application must include a binding declaration of compliance with the requirements laid down in this Order, accompanied by documentary evidence of such compliance.

In particular, the applicant must submit with the application the technical standards on which the certified digitisation procedure he proposes to have certified is based, and also the security, control and operating protocols or standards and procedures relating to the creation and accessing of the documentary data base containing the digitised images of the paper originals supplied by the taxable person and the electronic signature mechanisms used.

(b) In addition, the documents presented must include a report issued by an independent IT auditing entity with proven technical expertise in the field of analysis and assessment of the activity concerned, giving an opinion on the applicant's compliance with the

conditions laid down in this Order for the acceptance of the certified digitisation system for which certification is sought, and on the procedures used.

(c) Where the application submitted does not contain all the elements necessary for verification of the legal requirements, the applicant may be required to remedy the defects within 10 days, with a warning that otherwise he will be deemed to have desisted with no further formality. Where the requirement to put the application in order is addressed in time but the defects cited are not deemed to have been remedied, the applicant will be advised that the application is refused pursuant to point (e) below.

(d) In order to carry out such verification, the Tax IT Department may gather whatever supplementary information it judges necessary to check the accuracy of the information declared by the applicant and perform any additional checks that it may consider desirable.

(e) Once compliance with the requirements laid down in this Order is verified, the Director of the Tax IT Department shall order the certification of the digitisation software presented and its inclusion in a list to be published on the web page of the Agencia Estatal de Administración Tributaria (AEAT), [www.agenciatributaria.es](http://www.agenciatributaria.es). This decision shall state the conditions in which the application has been granted and the reference identifying it. If it is not granted, the communication advising of the refusal of authorisation must state the reason for such refusal. An appeal may be lodged with the Director-General of the AEAT against whatever decision is issued.

(f) The Director of the Tax IT Department shall decide on the application for acceptance within six months. If verification is not completed or no express decision has been issued within that time, the lack of response from the administration may be considered to constitute rejection of the application.

(g) Applications referred to in this Article may be made by any developer established in Spain or in any other Member State of the European Union.

### **36. ANY OTHER SPECIFIC RULE IN RELATION TO INVOICE STORAGE.**

There are no further rules at this time.

## **SIMPLIFIED INVOICES**

### **37. WHAT ARE THE SITUATIONS WHERE SIMPLIFIED INVOICING IS ALLOWED PURSUANT TO ARTICLE 238 OF THE VAT DIRECTIVE (2006/112/EC)? AND WHAT ARE THE SPECIFIC RULES?**

Article 6 of Royal Decree 1496/2003 of 28 November 2003, which regulates invoice contents, provides that:

1. All invoices and counterfoils must contain the particulars or requirements listed below, without prejudice to particulars or requirements that may be compulsory for other purposes or to the possibility of including other information:

- (a) Number, and series where applicable Invoice numbering must be consecutive within each series.
- (b) Invoices may be issued in separate series where warranted, including cases where the person required to issue them operates from more than one establishment and where the person required to issue them engages in transactions of different kinds.

However, the following invoices must be issued in specific series in all cases:

- 1. invoices referred to in Article 2(3);
- 2. invoices issued by recipients of transactions or by third parties referred to in Article 5, for each of which there must be a separate series;
- 3. corrective invoices;
- 4. invoices issued pursuant to the fifth additional provision of the VAT Regulation approved by Royal Decree 1624/1992 of 29 December.

(b) The date of issue.

(c) Full name and address or trade name of the person required to issue the invoice and the recipient of the transactions.

In the cases referred to in Article 2(3), the particulars to be entered shall be those of the taxable person to whom the goods or services are supplied. The invoice must also show the particulars of the supplier of the goods or services.

(d) Tax identification number assigned by the Spanish administration or, where applicable, by another Member State of the European Community, under which the transaction was carried out by the person required to issue the invoice.

It shall likewise be compulsory to include the tax identification number of the recipient in the following cases:

- 1. supply of goods exempt under Article 25 of the VAT Act to another Member State;
- 2. a transaction of which the recipient is liable for the tax payable on it;
- 3. transactions deemed to be carried out in the territory where the tax is applicable if the trader or professional required to issue the invoice is considered to be established in that territory.

In the cases referred to in Article 2(3), the tax identification number to be entered shall be that of the taxable person to whom the goods or services are supplied. The invoice must also show the particulars of the supplier of the goods or services.

(e) Domicile of the person required to issue the invoice and the recipient of the transactions.

Where the person required to issue an invoice or the recipient of the transactions has more than one fixed place of business, the location of the place of business or establishment referred to in the invoice must be indicated in cases where such reference is relevant for determining the tax regime applicable to those transactions.

In the cases referred to in Article 2(3), the tax identification number to be entered shall be that of the taxable person to whom the goods or services are supplied. The invoice must also show the particulars of the supplier of the goods or services.

Where the recipient of the transactions is a natural person not acting as a trader or professional, it shall not be obligatory to include their address.

(f) Description of the transactions, stating all the particulars necessary to determine the applicable basis of assessment, as laid down in Articles 78 and 79 of the VAT Act, and the amount, including the unit price of the transactions before tax and any discount or reduction not included in that unit price.

(g) The tax rate or rates applicable to the transactions.

h) The amount of tax payable, if any, which must be entered separately.

i) The date on which the transactions referred to were carried out or, where applicable, advance payment was received if that is different from the invoice issue date.

(...)

8. Notwithstanding the provisions of paragraph 1 of this article, if the persons carrying out the transactions are not traders or professionals acting as such, they shall not be required to include in the invoice the identifying particulars of the recipient in respect of transactions worth less than 100 euro, not including Value Added Tax. This limit may be overstepped in cases authorised by the AEAT Tax Management Department of certain business or professional sectors or undertakings, in order to avoid disruption of business or professional activities.

## **PERIODIC VAT RETURNS**

### **38. UNDER WHAT CIRCUMSTANCES IS A TRADER OBLIGED TO SUBMIT A VAT RETURN?**

In principle, all registered operators figuring as taxable persons subject to VAT are obliged to submit quarterly returns (in some cases these are monthly) regardless of whether or not such persons carried out transactions during the quarter (or month) in

question. Persons who only carry out operations which are tax-exempted and who have no right whatsoever to deduct VAT are not obliged to submit returns.

Taxable persons must likewise file an annual summary return to which they must attach copies of all of the returns filed during the year.

**39. AT WHAT INTERVALS ARE VAT RETURNS AND ASSOCIATED PAYMENTS TO BE MADE?**

The payment period coincides with the calendar quarter. However, the said payment period coincides with the calendar month in the case of the following taxable persons:

1. persons whose turnover during the previous calendar year exceeded €6 010 121;
2. persons who are authorised to apply for the return of balances in their favour at the close of each payment period.

The form approved for each period by the Ministry of Economic Affairs and Finance must be used for the return and submitted during the first twenty calendar days of the month following that corresponding to the monthly or quarterly payment period.

**40. WHAT IS THE PROCEDURE USED TO REIMBURSE EXCESS VAT PAID AS INDICATED IN THE PERIODIC VAT RETURN? WHAT TIME LIMITS, IF ANY, ARE SET FOR THE REIMBURSEMENT OF EXCESS VAT?**

According to Articles 124 *et seq.* of Law 58/2003 of 17 December 2003, the repayment procedure is initiated by the submission of a self-assessment giving rise to an amount to be reimbursed, and introduced by an application for repayment or by submission of data.

Where submission of a self-assessment gives rise to an amount to be reimbursed, the tax administration must make the repayment as provided in Article 31 of this Act.

The time allowed for such repayment shall start from the expiry of the time limit for submission of a self-assessment.

In cases where self-assessments giving rise to an amount to be reimbursed are submitted late, the time limit for repayment referred to in Article 31 of this Act shall start from the submission of the out-of-time self-assessment.

Where the tax regulations so require, the repayment procedure shall commence with the submission of an application to the tax administration or, in the case of taxable persons who are not obliged to present a self-assessment, with a submission of data.

The period for repayment pursuant to Article 31 of this Act shall commence with the submission of the application or with the expiry of the time allowed for data submission, and the procedure shall be governed by the particular rules governing each tax.

The repayment procedure shall be concluded by the agreement acknowledging the requested repayment, by revocation pursuant to Article 104(3) of this Act or by the initiation of a data verification, a limited check or an inspection procedure.

In any case the obligation to pay the interest on arrears in respect of eventual repayment pursuant to Article 31 of this Act shall subsist.

According to Article 115 of the VAT Law No 37/1992 of 28 December 1992, taxable persons who have been unable to make deductions in an assessment period via the procedure provided in Article 99 of this Act because these deductions exceeded the amount of tax due shall be entitled to apply for repayment of the balance in their favour at 31 December of each year arising from the self-assessment corresponding to the last assessment period of that year.

However, the taxable persons referred to in Article 116 of this Act shall be entitled to request repayment of the balance in their favour at the end of each assessment period.

In the cases referred to in this article and the article below the administration shall, where appropriate, issue a provisional assessment within six months of the end of the period allowed for submission of the self-assessment in which refund of VAT is applied for. However, if the self-assessment is submitted late, the six months shall start to run from the date of submission.

If the self-assessment, or provisional assessment as the case may be, gives rise to an amount to be reimbursed, the tax administration shall make the repayment automatically, without prejudice to any subsequent provisional or final assessments that may be appropriate.

The repayment procedure shall be that provided for in Articles 124 to 127, inclusive, of the General Taxation Act (No 58/2003 of 17 December 2003) and its implementing rules.

If the provisional assessment was not issued within the stipulated time, the tax administration shall automatically repay the full amount requested, without prejudice to any subsequent provisional or final assessments that may be appropriate.

If the period expires without a repayment order having been issued for reasons attributable to the tax administration, interest on arrears as provided in Article 26(6) of the General Taxation Act shall accrue on the amount to be repaid, from the day following the expiry of the said period until the date that a payment order is made, without the taxable person having to claim it.

According to Article 29 of Royal Decree 1624/1992 of 29 December 1992, the automatic repayments referred to in Article 115 of the VAT Act shall be made by bank transfer. The Ministry of Economy and Finance may authorise repayment by crossed cheque where the circumstances so warrant.

**41. DO SPECIAL RULES EXIST FOR THE PERIODIC VAT RETURNS OF SMALLER TRADERS AND CERTAIN CATEGORIES OF BUSINESS? IF SO, PLEASE GIVE A DESCRIPTION.**

Taxable persons who opt for the simplified scheme submit their returns using a different form from the one used by all other taxable persons. However, the tax return and assessment period is also quarterly and the submission of an annual summary return is likewise required.

**42. DO YOU OPERATE SIMPLIFIED CALCULATIONS OF TAX LIABILITY? IF SO, WHAT ARE THE QUALIFYING CRITERIA, TO WHOM DO THEY APPLY AND WHAT IS THE NATURE OF THE SIMPLIFICATION?**

The simplified scheme is applied to certain operations carried out by natural persons who have not opted for the general tax regime.

The tax payable is calculated by applying indexes based on specific tax data which vary according to the activity in question. The amount of VAT due may be deducted from the amount thus calculated, even if a minimum amount has been established for payment under each activity.

## **RECAPITULATIVE STATEMENTS**

**43. DO YOU AUTHORISE THE PRESENTATION OF QUARTERLY RECAPITULATIVE STATEMENTS? IF SO, WHAT ARE THE THRESHOLDS AND CONDITIONS?**

The tax return period generally covers transactions carried out in a calendar month, and the statement must be presented during the first twenty calendar days of the month immediately following the monthly period concerned. However, statements may be presented bimonthly, quarterly or annually in the following cases:

Bimonthly: if at the end of the second month of a calendar quarter the total value of goods and services to be entered in the summary statement exceeds €100 000 (commencing in 2012, the threshold will be set at €50 000).

Quarterly: if the total declared value of goods and services in the reference quarter or in any of the four preceding calendar quarters does not exceed €100 000.

Annual: in the first thirty days of January of the following year (the first would be in January 2011), if the total value of goods and services over the year (not including VAT) does not exceed €35 000 and the total value of VAT-exempt goods and services supplied to another Member State (excepting new means of transport) does not exceed €15 000.

**44. IS ANY ADDITIONAL INFORMATION REQUIRED OTHER THAN THAT SET OUT IN ARTICLE 266 OF THE VAT DIRECTIVE (2006/112/EC)?**

Article 80 of Royal Decree 1496/2003 of 28 November 2003, which regulates the contents of the recapitulative statement, provides that:

1. Recapitulative statements shall be made on a form conforming to the model approved for that purpose by the Ministry of Economy and Finance, which may be presented on a magnetic medium under such conditions as shall be established.

The statement must include identifying particulars of suppliers and purchasers, and also the tax base for the intra-Community transactions declared.

If the transactions are paid for in a unit of account other than the euro, the tax base for the transactions concerned must be given in euro referenced to the chargeable event, depending on the option chosen by the trader or professional.

For transfers of goods as referred to in Article 9(3) and Article 16(2) of the VAT Act, the statement must show the identification number assigned to the taxable person in the other Member State.

2. The particulars contained in recapitulative statements must be corrected in the event of errors or alterations resulting from the circumstances referred to in Article 80 of the VAT Act.

The correction shall be included in the recapitulative statement for the period in which the recipient of the goods was notified.

To sum up, in Spain it is compulsory to state both intra-Community purchases and supplies, as well as certain kinds of service provision as laid down in the Directorate-General of Taxation's Order of 23 December 2009. The following particulars must be included: the taxable person's identification number in the other Member State, with his name and address or trade name; the tax base for the transaction; and, where applicable, it must state whether the transaction concerned is a triangular one. These particulars must conform to Articles 264 and 265 of Council Directive 2006/112/EC of 28 November 2006 on the common system of Value Added Tax and other related rules.

**45. DO YOU OPERATE SIMPLIFIED PROCEDURES AS REGARDS RECAPITULATIVE STATEMENTS AS PROVIDED FOR IN ARTICLE 269 OF THE VAT DIRECTIVE (2006/112/EC)? IF SO, WHAT ARE THE RELATED THRESHOLDS FOR APPLYING SUCH PROCEDURES?**

Recapitulative statements covering the period corresponding to the calendar year may be submitted from 1 to 30 January of the following year when both of the following circumstances arise:

- The total value (not including VAT) of goods or services supplied during the preceding calendar year did not exceed €30 000.
- The total value of exempt intra-Community supplies of goods other than new means of transport during the preceding calendar year did not exceed €15 000.

## **ELECTRONIC RETURNS**

### **46. IS IT POSSIBLE TO SUBMIT VAT RETURNS BY ELECTRONIC MEANS? IF SO, HOW AND USING WHICH TECHNOLOGY? WHO SHOULD BE CONTACTED FOR AUTHORISATION TO SUBMIT STATEMENTS ELECTRONICALLY?**

According to Order EHA/3786/2008 of 29 December 2008, returns may be submitted via the Internet either by the declarant himself or by a third party acting on his behalf, as provided for in Articles 79 to 81 inclusive of the General Regulation governing tax administration and inspection actions and procedures and the implementation of common procedural rules for the application of taxes, and in Order HAC/1398/2003 of 27 May 2003 laying down the cases and the conditions for implementation of "social cooperation" in the administration of taxes; this explicitly includes electronic submission of certain returns and other tax-related documents.

Telematic submission shall be subject to the following conditions:

(a) The declarant must have a Fiscal Identification Number (NIF) and be entered on the register of traders, professionals and withholders before submitting the self-assessment form.

(b) The declarant must install in his browser an X.509.V3 electronic certificate issued by the Fábrica Nacional de Moneda y Timbre-Real Casa de la Moneda [Spanish Mint] or any other electronic certificate accepted by the AEAT pursuant to Order HAC/1181/2003 of 12 May 2003 laying down specific rules on the use of electronic signatures in tax-related business with the AEAT using electronic, computer or telematic media.

If telematic submission is to be carried out by a person or entity authorised to submit returns on behalf of third persons, that authorised person or entity must have the certificate installed in his browser.

(c) To make a telematic submission, the declarant or the submitting agent must complete and transmit the form, corresponding to model 303, which shall be accessible on the AEAT website.

If formal mistakes are detected in the transmission of returns, the system itself will send error messages drawing them to the attention of the person submitting the return so that they can be remedied.

Telematic transmission of the form must be performed on the same date as the payment corresponding thereto. Notwithstanding the foregoing, in the event of technical difficulties preventing telematic transmission of the return on the same date as the payment, that telematic transmission may be performed up to the second working day following the payment date. Under no circumstances shall this entail any alteration of the time limits for submission of returns and making payments laid down in Article 71(4) of the Value Added Tax Regulation.

In the case of returns resulting in a payment obligation, the procedure for telematic submission shall be as follows:

(a) The declarant shall contact the depositary acting as the collection agent (banks, savings banks or credit cooperatives) by telematic means, directly or through the AEAT, or else by visiting the AEAT offices, to make the requisite payment and furnish the following particulars:

1. NIF of the taxable person (9 characters)
2. Tax year (last 2 digits)
3. Period: 2 characters. M or T.
4. Payment document: 303.
5. Type of self-assessment = I (payment).
6. Amount paid (must be greater than zero).

Once the money is paid in, the collecting agent shall assign a Full Reference Number (Sp. acronym NRC), to be generated automatically using a cryptographic system that directly relates the NRC to the amount paid in.

At the same time, it shall transmit or deliver, depending on the means of data transmission, a receipt containing at least the particulars listed in Article 3(2) of Order EHA/2027/2007 of 28 June 2007 partially implementing Royal Decree 939/2005 of 29 June 2005 approving the General Regulation of Collection in relation to financial institutions acting as collection agents for the AEAT.

(b) Once the foregoing operation is complete, the declarant or the submitting agent must connect to the AEAT via the Internet at the URL [www.agenciatributaria.es](http://www.agenciatributaria.es), go to Oficina Virtual, select the tax (Value Added Tax) and the return to be transmitted (Form 303) and enter the NRC supplied by the collection agent.

(c) Next he must transmit the return with an electronic signature, which is generated by selecting the certificate previously installed in the browser for that purpose.

If the submitting agent is a person or entity authorised to submit returns on behalf of third parties, only the signature of that person or entity is required

(d) If the return is accepted, the AEAT will return the details of the amount to be collected, validated with a 16-character electronic code, with the date and time of submission.

If the submission is rejected, a screen will appear showing the errors detected. In that case, the errors in the entry form must be corrected or the submission must be repeated if the error was due to some other cause.

The submitting agent must save the accepted return, and the document showing the amount to be paid, where applicable, duly validated with the requisite electronic code

If the result of the assessment is a refund or compensation, or it refers to a period without activity, the procedure shall be as follows:

(a) The declarant, or the submitting agent must access the AEAT via the Internet at the URL [www.agenciatributaria.es](http://www.agenciatributaria.es), go to Oficina Virtual and select the tax (Value Added Tax) and the return to be transmitted (Form 303).

(b) Next he must transmit the return with an electronic signature, which is generated by selecting the electronic certificate previously installed in the browser for that purpose.

If the submitting agent is a person or entity authorised to submit returns on behalf of third parties, only the signature of that person or entity is required

(c) If the return is accepted, the AEAT will return the details of the validated form on screen with a 16-character electronic code, with the date and time of submission. If the submission is rejected, a screen will appear showing the errors detected. In that case, the errors in the form must be corrected or the submission must be repeated if the error was due to some other cause.

The submitting agent must save the accepted return, duly validated with the requisite electronic code

If the taxable person does not possess an active account with a bank in Spain or there is any other circumstance so warranting, a note to this effect must be appended to the return, addressed to the appropriate Administrator or Delegate of the AEAT who may, in view thereof and subject to the requisite enquiries, order the appropriate refund by means of a personal cheque drawn on the Bank of Spain. Also, he may order repayment by means of a crossed or personal cheque drawn on the Bank of Spain where repayment by bank transfer is not possible.

In cases where the return results in a right to a refund, persons requesting repayment by personal cheque drawn on the Bank of Spain must submit a request form to the general telematic registry of the AEAT, to which end the declarant must access the AEAT website at the URL [www.agenciatributaria.es](http://www.agenciatributaria.es), go to Oficina Virtual, select the option for access to the telematic document registry, and there select the appropriate form, append the documentation and send the documents.

If the Form 303 self-assessment results in an obligation to pay and is submitted with an application for compensation, deferral or payment by instalments, the applicable rules are set out in Articles 71 *et seq.* of the General Taxation Act, Law 58/2003 of 17 December 2003, and Articles 55 *et seq.* of the General Regulation on Collection approved by Royal Decree 939/2005 of 29 July 2005, and in Articles 65 of the General Taxation Act, Law 58/2003 and 44 *et seq.* of the General Regulation on Collection respectively.

The procedure for telematic transmission of returns with applications for deferral or payment by instalments, acknowledgement of debt with a request for compensation, or simple acknowledgement of the debt, shall be the same as in the foregoing paragraphs, with the difference that the declarants must access the website of the AEAT's telematic registry and send the document specified in the regulations for each of the above-mentioned types of application, as provided in the AEAT Directorate-General's Decision of 23 August 2005 regulating the submission of certain electronic documents to its general telematic registry. Once the appropriate document has been sent, the AEAT

shall send back a reference number on-screen; this number must be quoted when sending such returns.

**47. IS IT POSSIBLE TO SUBMIT RECAPITULATIVE STATEMENTS BY ELECTRONIC MEANS? IF SO, HOW AND USING WHICH TECHNOLOGY? WHO SHOULD BE CONTACTED FOR AUTHORISATION TO SUBMIT STATEMENTS ELECTRONICALLY?**

The way in which statements are submitted depends on the number of registers submitted, so that:

1. Statements containing up to 5 000 000 records must be submitted telematically via the Internet, after first downloading the help programme from the AEAT website.
2. Statements containing more than 5 000 000 records, whoever the person or entity obliged to submit them might be, must be submitted on a computer-legible medium; they must be exclusively individual and must comply with the following characteristics:
  - Type: DVD-R or DVD+R
  - Capacity: Up to 4.7 GB
  - UDF file system
  - Single-side, single-layer

Telematic submission of statements corresponding to Form 349 shall be subject to the following conditions:

1. The declarant must possess a tax identification number (NIF).
2. The declarant must have installed on his browser an X.509.V3 user certificate issued by the Fábrica Nacional de Moneda y Timbre-Real Casa de la Moneda (Spanish Mint) in accordance with the procedure laid down in annexes III and IV of the Order of 24 April 2000 laying down the general conditions and the procedure for the telematic submission of Personal Income Tax returns (Boletín Oficial del Estado of 29 April).
3. If the submitter is a person or entity authorised to submit returns on behalf of third persons, he must have installed on his browser an X.509.V3 user certificate issued by the Fábrica Nacional de Moneda y Timbre-Real Casa de la Moneda (Spanish Mint).
4. For telematic submission of returns on Form 349, the declarant must first use a help programme to obtain the file with the return to be transmitted. This help programme may be the one developed by the AEAT for return form 349 or another which can be used to obtain a file in the same format.

In addition, declarants opting for this mode of submission must take account of the technical standards that are required for such submission, which are set out in Annex II to the above-cited Order of 24 April 2000.

Telematic submission of a return on form 349 is not possible in the following cases:

1. Where the number of traders' records to be transmitted exceeds 1 500.
2. Where the submission is a collective one as provided in the relevant Order.

## **OBLIGATIONS AT IMPORTATION**

### **48. WHO ARE THE PERSONS THAT MAY BE DESIGNATED OR RECOGNISED AS LIABLE FOR VAT ON IMPORTS AS PROVIDED IN ARTICLE 201 OF THE VAT DIRECTIVE (2006/112/EC)?**

The following shall be considered to be importers provided that they meet the requirements laid down in the customs legislation:

1. Recipients of imported goods, whether purchasers, assignees or owners thereof, or consignees importing such goods on their own behalf.
2. Travellers, in respect of goods they drive when entering the territory where VAT is applicable.
3. Owners of goods in cases not covered by the foregoing points.
4. Purchasers, or where applicable owners, lessors or charterers of goods referred to in Article 19 of Law 37/1992.

The recipients shall be jointly and severally liable for the tax debt accruing to the taxable person in respect of transactions on which the tax is not properly levied due to culpable negligence or wilful omission.

For these purposes, liability shall extend to any penalty that may be imposed.

On importing goods, the following shall also be jointly and severally liable for payment of VAT:

1. guaranteeing associations in cases so determined in International Conventions;
2. RENFE when acting on behalf of third parties pursuant to International Conventions;
3. persons or entities acting in their own name and on behalf of the importers.

Customs agents acting in the name and on behalf of their principals shall be secondarily liable for payment of VAT.

The liability defined in paragraphs 2 and 3 shall not extend to tax debts which come to light as a consequence of actions carried out outside customs areas.

#### **49. WHAT ARE THE RULES FOR DECLARING AND PAYING VAT ON IMPORTS?**

According to Article 73 of Royal Decree 1624/1992 of 29 December 1992:

1. The VAT payable on import transactions shall be paid at the same time as the customs duties or at the time that these would have been payable in the absence of exemption or non-liability, regardless of any payment that might be due in respect of any other charges.

The foregoing paragraph shall apply, and hence the mode of payment shall be the same, for goods leaving the areas mentioned in Article 23 or not coming under the regimes listed in Article 24 of the VAT Act, except for the regime governing non-customs deposits, provided that the importation of such goods complies with Article 18(2) of the said Act.

For these purposes, taxable persons carrying out import transactions must submit the appropriate tax declaration in the form approved by the Ministry of Economy and Finance, in the time and manner laid down in the customs regulations.

The taxable person shall effect payment of tax on import-equivalent transactions in VAT returns on a form designated for that purpose by the Ministry of Economy and Finance.

VAT payable on import-equivalent transactions may be deducted in the same form, subject to the requirements laid down in Title VIII, Chapter I, of the VAT Act.

The payment deadlines and periods are as follows:

(a) Transactions covered by paragraphs Article 19(1), (2), (3) and (4) of the VAT Act shall be included in a return to be submitted to the relevant department of the tax administration for the taxable person's tax domicile, directly or through collection agents, within the following time limits:

1. In the case of transactions referred to in Article 19(1), (2) and (3) of the VAT Act, in the first 30 days of the month of January following the calendar year in which the tax became due.
2. In the case of transactions referred to in Article 19(4) of the VAT Act carried out in any calendar quarter, within the times provided in Article 71(4) of this regulation.

(b) Transactions listed in Article 19(5) of the VAT Act carried out in the payment periods referred to in Article 71(3) of this regulation shall be included in a return to be submitted to the department of the tax administration competent to verify the respective establishment, location, area or deposit, either directly or through collection agents, within the time limits laid down in Article 71(4) of this regulation.

(c) Transactions referred to in paragraph (b) may be grouped in a single return, which must be submitted, subject to the same time limits and periods, to the relevant department of the tax administration for the taxable person's tax domicile, directly or through collection agents, in the following cases:

1. where the sum of the tax bases for import-equivalent transactions carried out during the last calendar year exceeds €1 500 000;
2. where the tax administration so authorises at the applicant's request.

The collection and payment of VAT assessed through customs in transactions involving the importation of goods shall be carried out in accordance with the General Regulation on Collection.

Tax debts incurred under the arrangements for travellers, post or green labels shall be collected and paid in the manner provided for the customs duties incurred.

Customs may require an adequate guarantee in the following external trade transactions:

- a) transactions in which the taxpayer must satisfy certain requirements to qualify for exemptions or allowances;
- b) where the circumstances so warrant.

The purpose of the guarantee shall be to assure payment of the debt in the event of breach of the conditions or requirements attached to the tax concession concerned, or in the event of special circumstances arising in connection with the transaction.

**50. DO YOU APPLY THE DEFERRED ACCOUNTING OPTION MENTIONED IN ARTICLE 211 OF THE VAT DIRECTIVE (2006/112/EC)? IF SO, WHAT ARE THE CONDITIONS?**

Subject to guarantee, VAT may be paid within 30 days of the debt being recorded.

## **ADMINISTRATIVE REQUIREMENTS**

**51. DO YOU OPERATE A FLAT RATE SCHEME? IF SO, TO WHOM DOES THE SCHEME APPLY?**

- The special compensatory charge scheme is applied to retail traders who are natural persons or entities operating under the special arrangements for income allocation for Personal Income Tax and engaged in the retail sale of any sort of articles or products not specifically excluded.

Retail traders who opt for this scheme must may their suppliers, on top of the VAT on their acquisitions, a compensatory amount releasing them from any further liability to pay VAT.

Such retailers are not required to issue invoices or other documents serving as invoices in respect of transactions they carry out where the sale is made to non-taxable persons.

- Under the special scheme for agriculture, livestock and fisheries, operators of agricultural, livestock and fisheries holdings may officially opt out of this scheme, either

when they submit their declaration of commencement of their activity or during the month of December preceding the tax year during which their decision to opt out is to take effect, by submitting the relevant tax form.

Taxable persons in this scheme are entitled to receive compensation amounting to 9% (in the case of farming or forestry) or 7.5% (in the case of stockbreeding or fishing) of the value of the products supplied by their holdings.

For purposes of the activities covered by this special scheme, taxable persons who opt for it are not subject to the obligations relating to assessment, charging or payment of VAT or to registration or accounting obligations.

**52. DO YOU OPERATE SIMPLIFIED ADMINISTRATIVE REQUIREMENTS OTHER THAN THOSE ALREADY MENTIONED? IF SO, PLEASE GIVE A DESCRIPTION.**

The optional simplified scheme applies to small businesses which comply with a series of requirements and whose turnover does not exceed certain ceilings. The peculiarity of this scheme lies in that the VAT due is calculated by applying objective signs, indices or modules. Traders under this scheme are not required, barring exceptions, to draw up invoices. .

**53. IN WHICH LANGUAGE(S) ARE FORMS (PERIODIC VAT RETURNS AND SUMMARY STATEMENTS) AVAILABLE OR TRANSLATED?**

VAT specimens, forms and recapitulative statements are available in Spanish. Only Form 361 for the refund of VAT paid by certain traders and professionals not established in the territory where VAT is applicable is available in English and Spanish (8<sup>th</sup> and 13<sup>th</sup> Directives).

## **RIGHT TO DEDUCTION**

**54. FOR WHICH CATEGORIES OF GOODS AND SERVICES IS THERE NO RIGHT OF DEDUCTION?**

According to Articles 95 et seq. of Law 37/1992 of 28 December 1992:

Traders or professionals may not deduct amounts charged or paid for purchases or imports of goods or services not directly and exclusively related to their business or professional activity.

The following, inter alia, shall not be considered to be directly and exclusively related to a business or professional activity.

1. Goods habitually used for that activity and for other non-business or non-professional activities during alternate time periods.

2. Goods or services that are used simultaneously for business or professional activities and for private ends.
3. Goods or services that are not entered in the accounts or official records of the taxable person's business or professional activity.
4. Goods and rights acquired by the taxable person which are not included in his business or professional assets.
5. Goods intended for use in satisfying personal or private needs of traders or professionals, their relatives or dependent personnel, except for goods used for free accommodation of the company's surveillance and security personnel on its premises or facilities, and for economic and socio-cultural services provided to the personnel employed in the activity.

Amounts paid as a consequence of the acquisition, including for self-use, importation, leasing, transformation, repair, maintenance or use of the goods and services listed hereafter and of goods and services accessory or complementary thereto, may not be deducted in any proportion:

1. Jewellery, precious stones, natural or cultured pearls, and objects made entirely or partly of gold or platinum.

For the purposes of this tax, precious stones mean diamonds, rubies, sapphires, emeralds, aquamarines, opals and turquoises.

3. Foodstuffs, beverages and tobacco.
4. Recreational shows and services.
5. Goods or services intended as gifts for customers, employees or third persons.

These shall not include:

- a) Free samples and advertising props of little value, as defined in Article 7 paragraphs 2 and 4 of Law 37/1992.
- b) Goods intended exclusively for delivery or use, directly or through processing, for a monetary consideration, which subsequent to their acquisition are used as gifts for customers, employees or third persons.
6. Travel or catering services, unless the amounts concerned are considered tax-deductible for purposes of Personal Income tax or Company Tax.

The foregoing paragraph does not include amounts paid in respect of the transactions mentioned in them or amounts relating to the following goods and services:

1. Goods which objectively considered are exclusively for industrial, commercial, agricultural, clinical or scientific use.

2. Goods intended exclusively for delivery or use, directly or through processing, for a monetary consideration, by traders or professionals habitually engaging in such transactions.

3. Services received, for a monetary consideration, from traders or professionals habitually engaging in such transactions.

The deductions set out in this article and the previous one shall also be subject to the conditions and requirements laid down in Title VIII Chapter I of Law 37/1992, particularly those referring to pro-rating rules.

**55. IN WHAT CATEGORIES OF GOODS IS THERE A PARTIAL RIGHT OF DEDUCTION? IF SO, WHAT IS THE PERCENTAGE?**

Article 95(3) of Law 37/1992 of 28 December 1992 provides that:

Amounts of tax paid for the acquisition, importation, lease or use under some other arrangement of capital goods used entirely or partially in the conduct of the business or professional activity concerned may be deducted subject to the following rules:

1. In the case of capital goods other than those referred to in the following rule, insofar as there are reasonable grounds to suppose that those goods will be used in the conduct of the business or professional activity concerned.

2. Passenger cars and their trailers, mopeds and motorcycles shall be presumed to be for use in the business or professional activity concerned in a proportion of 50 per cent.

For these purposes, passenger cars and their trailers, mopeds and motorcycles are those defined as such in the annex to Legislative Royal Decree 339/1990 of 2 March 1990 approving the provisions of the Traffic, Circulation of Motor Vehicles and Road Safety Act, and also those defined as mixed vehicles in the same annex, and all-terrain vehicles or “jeeps”.

Notwithstanding rule 2, vehicles of the types listed hereafter shall be presumed to be for use in the conduct of the business or professional activity concerned in a proportion of 100 per cent.

(a) Mixed vehicles used for the transport of goods.

(b) Vehicles used to provide paid passenger transport services.

(c) Vehicles used to provide paid driving or flying tuition services.

(d) Vehicles used by their makers for tests, trials, demonstrations or sales promotion.

(e) Vehicles used by sales representatives or agents in the course of their work.

(f) Vehicles used for surveillance services.

3. The deductions referred to in the above rules must be adjusted if it is established that the actual degree of use of such goods in the conduct of the business or professional activity concerned is other than was initially envisaged.

Such adjustment shall comply with the procedure laid down in Title VIII, Chapter I of Law 37/1992 for the deduction and adjustment of tax paid on the acquisition of capital goods, but substituting the percentage of transactions generating a right of deduction with respect to the total with the percentage which corresponds to use in the conduct of the business or professional activity concerned.

4. The taxable person must furnish legally-acceptable evidence of the degree of use in the conduct of the business or professional activity concerned. Neither the return submitted by the taxable person nor the entry of the capital goods concerned in the official records of the business or professional activity shall be accepted as means of proof.

5. For the purposes of this section, goods coming within the meaning of Article 95(2) points 3 and 4, of the VAT Act, Law 37/1992 shall not be considered for use in any proportion in a business or professional activity.

The foregoing shall likewise apply to VAT charged or paid on the acquisition or importation of the following goods and services that are directly related to the goods referred to in Article 95(2) above.

1. Accessories and spare parts for the goods mentioned.
- 2 Fuels, lubricants and energy-producing products necessary for their operation.
3. Parking services and use of toll roads.
4. Rehabilitation, renovation and repair of the above.