

TAX REFORM

New legislation on value added tax, the Canary Island general indirect tax, excise and special taxes and environmental taxation

Law 28/2014, of November 27, 2014, amending Value Added Tax Law 37/1992, of December 28, 1992, Law 20/1991, of June 7, 1991, amending tax aspects of the Canary Islands tax-economic scheme, Excise and Special Taxes Law 38/1992, of December 28, 1992, and Law 16/2013, of October 29, 2013, establishing certain environmental taxation measures and adopting other tax and financial measures

As part of the tax reform, Law 28/2014 contains the amendments relating to indirect taxes and environmental taxation published in the Official State Gazette on November 28, 2014.

We summarize below the main changes affecting these taxes.

Even though some amendments are made to the system for different technical reasons than others, for the sake of consistency in the Spanish tax system, the changes affecting value added tax (VAT) are usually reproduced exactly in the legislation on the Canary Island general indirect tax, despite the fact that the Canary Islands fall outside the scope of the common VAT system and, accordingly, are not subject to Community legislation or case law precedents.

For this reason, to avoid unnecessary repetition, the amendments affecting both VAT and the Canary Island general indirect tax will be explained together.

Some of the statutory provisions must be implemented by regulations. In relation to VAT, a draft royal decree has already been submitted to public consultation in compliance with the implementation requirement. Although the wording has not yet been approved and, accordingly, cannot be regarded as final, we will refer to this draft decree as necessary to complete our analysis of the provisions.

1. Value added tax and the Canary Islands general indirect tax

The preamble to the law refers to three broad categories into which the amendments added to the VAT law may be divided: (i) those relating to adaptations of its provisions to bring them into line with Community legislation or with its interpretation by the Court of Justice of the

European Union or, in some cases, to criteria adopted by the Commission; (ii) some technical adjustments aimed at giving greater legal certainty over the implementation of the tax and, lastly, (iii) a number of measures aimed at combatting fraud.

In our explanation, however, we will follow the order of the articles.

1.1 Territoriality (VAT)

An initial amendment, of a strictly technical nature, brings the provisions demarcating the various territories into line with the provisions of the Treaty on the Functioning of the European Union, in addition to introducing the classification of some territories in particular.

1.2 Transactions outside the scope of VAT (VAT and Canary Islands general indirect tax)

Two amendments were made in this area. First, in connection with transfers of going concerns, their non-taxable status is made conditional on the economic unit being independent (or capable of being independent) at the transferor.

This appears to be the legislature's response to the reasoning of the Supreme Court, which, when analyzing the applicable EU case law precedents, had held that the characterization as an "independent economic unit" must be examined at the acquirer.

On the other hand, the law expressly specifies that "the mere assignment of assets or rights" - not relating exclusively to occasional taxable persons - does not qualify as a non-taxable supply, and this circumstance is deemed to exist where the transfer is not accompanied by an organizational structure of material and/or human factors of production from which it may be concluded that what is transferred may be treated as an independent economic unit.

It also makes amendments in relation to the provisions on non-taxable transactions carried out by public authorities for no consideration or for consideration of a tax nature, in order to add technical refinements in relation to their scope and to give the status of law to the tax authorities' interpretation of the law.

In addition to defining what must be construed to fall within or outside the definition of public authority in connection with the application of this law, it is established as a legal rule that any transactions carried out in the context of the management tasks entrusted to public bodies, agencies or entities having the status of in-house and technical service providers to the public authorities that engage them, as well as those provided to the public authorities by public-sector bodies, agencies or entities wholly owned by those authorities, will not be taxable.

In the field of VAT, on transactions subject to VAT, even where carried out by the public authorities, a refinement is introduced in connection with the commercial activities of public radio and television broadcasting organizations, which we believe is simply a clarification.

These are accompanied by a third amendment to the VAT provisions, which simply updates the limit on the total cost of non-taxable supplies of advertising materials to the same customer, which now stands at €200.

1.3 Shares as a supply of goods (VAT and Canary Islands general indirect tax)

The Court of Justice made it clear in its judgment on DTZ Zadelhoff, of 5 July 2012 (case C-259/11) that in order for a member state to exclude the sale of securities attributing the ownership, use or enjoyment of a piece of real estate (which we will refer to as "real estate companies") from the exemption, the sale of such securities must previously be classified as a supply of goods.

The latest amendment to article 108 of the Securities Market Law was also accompanied by an amendment to the VAT and the Canary Islands General Indirect Tax Laws so as to render sales of shares in real estate companies non-exempt where the shares were transferred with a view to avoiding tax.

Nonetheless, the condition required to apply a provision of this nature, namely for the sale of shares to be characterized as a supply of goods, had not been fulfilled. This has now been remedied with the foregoing amendment.

Additionally, in the specific field of the Canary Islands general indirect tax, the definition of supply of goods is amended as follows:

- (i) In construction works the purpose of which is to build or restore a building, the cost of the materials provided by the builder must exceed 40% of the taxable amount (until now, that percentage has been 33%).

This amendment brings this item into line with VAT legislation.

- (ii) Transfers of goods under installment sales contracts with a condition precedent, leases with a purchase option are treated as supplies of goods, from when the lessee undertakes to exercise the option, and leases with a transfer of ownership clause binding on both parties.

1.4 Different sectors of business activity (VAT and Canary Islands general indirect tax)

The reference to financial lease as a sector of activity is updated to make reference to the transactions regulated in additional provision three of Law 10/2014, on the organization, supervision and solvency of credit institutions.

1.5 Tax and/or Customs suspension regimes (VAT)

This amendment gives the status of law to the administrative view that the taxable event consisting of an "import" or a "transaction treated as an import" will not take place, depending on the case, upon exit of the goods from the areas or arrangements established in articles 23 and 24, where that exit is the result of an exempt intra-Community supply, exempt export or similar exempt transaction.

1.6 Exemptions (VAT)

On October 24, 2012, the European Commission issued a reasoned opinion before filing a complaint with the Court of Justice contending that the Spanish exemption applicable to notary services relating to financial transactions did not comply with the provisions of the directive.

This amendment now removes these services from the list of exemptions, in keeping with the Commission's conclusions.

Besides this adaptation, the following exemptions are amended:

- Also in the context of the questions raised by the Commission, the care of children in the time between lessons or child care services outside school hours are now expressly included in the exemption relating to educational services.
- The exemption for the supply of land in initial contributions to Development Apportionment Entities by owners and the apportionments which those entities make to them in proportion to their contributions is eliminated.
- The reference to the "exclusive" purpose of the not-for-profit entities engaged in political, trade union, etc., activities is eliminated.
- The restriction whereby works must be carried out by the developer in order for land in process of urban development to be non-exempt is eliminated.
- The references in the technical exemptions of article 20.1.24 to the elimination of the exemption on the contributions to Development Apportionment Entities are updated.

1.7 Waiver of exemptions in real estate transactions (VAT)

One of the most significant amendments introduced in the legislation for 2015 is the extension of the conditions for the waiver of the exemption in real estate transactions.

Under the legislation in force through December 31, 2014, this waiver is only possible if the acquirer is entitled to a full deduction of the input VAT on the acquisition. Now, from January 1, 2015, it will be sufficient to be entitled to a partial deduction, even according to the expected use of the transferred goods. The implementing regulations will of course bring the provisions into line with this new option.

1.8 Exemptions in foreign trade transactions (VAT)

Some technical adjustments are made with respect to services related to exports, to stipulate that customs representatives are the only intermediaries that can receive these services. At present, this amendment is not accompanied by changes in the regulations.

Furthermore, the exemption for imports of goods and of services relating to the placement of goods under warehousing arrangements other than customs arrangements is restricted (as from January 1, 2016) to products subject to excise and special taxes, goods from the Community customs territory and other goods stipulated in Annex V of the Directive.

1.9 Place of supply of transactions (VAT and Canary Islands general indirect tax)

1.9.1 Place-of-supply rules for supplies of telecommunications services, radio and television broadcasting services and services supplied electronically

This change results from the compulsory transposition of the provisions of Directive 2008/8, effective from January 1, 2015, to establish the new place-of-supply rules

applicable to telecommunications services, radio and television broadcasting services and services supplied electronically and which have been discussed extensively in past commentaries.

To recapitulate, until December 31, 2014, these services supplied by entities established in Spain to final consumers domiciled in the Community or the Canary Islands, are subject to Spanish VAT or the Canary Islands general indirect tax, respectively.

Starting on January 1, 2015, however, they will be taxed in the member state where the customer has its domicile or principal residence, meaning that, if the customer is the final consumer, the supplier will be obliged to charge and pay over the VAT (or, as the case may be, the Canary Islands general indirect tax) in the state where the customer is domiciled.

Customers (whether traders or not) located outside the Community may be subject to tax in Spanish VAT territory if the service is used or operated in that territory.

In the field of VAT, in order to simplify management of the obligations to be performed in each of the member states where services are supplied, taxable persons can elect to use the "Mini One-Stop Shop" mechanism, under which the tax return to be filed in each jurisdiction will be managed exclusively through the tax authorities of the supplier's place of establishment (Spain, in this case).

1.9.2 Place of supply of "supplies with installation"

The quantitative limit on the installation cost in order for supplies of goods with installation or assembly to be deemed to be supplied in the territory where the installation is completed is eliminated, although the immobilization requirement is maintained.

1.9.3 Use & Enjoyment (Canary Island general indirect tax)

With respect to the Canary Island general indirect tax, the "catch-all" clause relating to effective use or enjoyment is amended so as to avoid the ongoing occurrence of double taxation as a result of the amendment made to the related clause of the VAT Law, effective from January 1, 2014, consisting of eliminating from the clause the reference made to "Canary Islands, Ceuta and Melilla".

The new wording of the special rule allows the services expressly listed in the provision and deemed to be located on the Canary Islands under the place-of-supply rules, but effectively used or enjoyed in the European Union, excluding the Canary Islands, not to be taxable for the purposes of the Canary Island general indirect tax.

1.10 Chargeability (VAT)

The legal reference to article 235 of the Revised Public Sector Contracts Law, made in relation to the chargeability of VAT on certifications of public works, is updated without altering its contents.

1.11 Taxable amount (VAT and Canary Islands general indirect tax)

Also in keeping with the criteria in Community case law precedents, the market value of transactions carried out for consideration that is not totally or partially in cash is replaced by the "value agreed by the parties".

The amendment is completed by specifying that, in the absence of an agreed value, the rules on self-supplies will apply.

In the specific field of the Canary Islands general indirect tax, the following rules are expressly established for the determination of the taxable amount in the absence of an agreed value:

- If the goods were supplied in the same state in which they were acquired without having been submitted to manufacturing, preparation or processing processes by the taxable person, or for its account, the taxable amount will be the amount stipulated in the transaction under which the goods were acquired.
- In the case of imported goods, the taxable amount will be the amount used to assess the tax on the importation of the goods.
- If the goods supplied were submitted to preparation or processing processes by the transferor, or for its account, the taxable amount will be the cost of the goods or services used to obtain the goods, including the personnel expenses incurred for the same purpose.
- If the value of the goods supplied was altered as a result of their use, impairment, obsolescence, devaluation, revaluation or for any other reason, the taxable amount will be the value of the goods at the time the supply is made.
- In the case of services, the cost of supplying the service, including, if appropriate, the depreciation of the transferred goods, will be taken as the taxable amount.

In addition to the foregoing, a reference is introduced, according to which the exclusion from the taxable amount of subsidies not related to the price does not include "*amounts paid by a third party as consideration for the transactions*".

1.12 Modification of the taxable amount (VAT and Canary Islands general indirect tax)

In cases where the taxable person is the subject of an insolvency order, the period for modifying the taxable amount is increased from one to two months after the end of the call to creditors to inform the insolvency manager of the existence of their claims.

In cases of the late payment of debts, the option for traders with SME status for the purposes of these taxes to reduce the taxable amount within six months after the chargeable date of the tax or in the general period of one year, is extended.

In the case of traders or professionals applying the cash-basis accounting scheme, the period for modifying the taxable amount will begin to run from December 31 of the year immediately after the year in which the transaction was carried out.

In the field of VAT, a technical correction is also included concerning application of the provision regulating the correction of deductions by the customer of the transactions.

1.13 New reverse-charge mechanism scenarios (VAT and Canary Islands general indirect tax)

New reverse-charge mechanism scenarios are established along the lines of the most recent legislative amendments aimed at preventing fraud. The new cases are for supplies of:

- silver, platinum and palladium;
- mobile phones;
- videogame consoles, laptop computers and digital tablets.

The items included in this new rule are defined in greater detail in annex ten to the VAT Law and in annex VII to the Canary Islands General Indirect Tax Law, by reference to the combined nomenclature.

The scenarios in the last two points, the reverse-charge mechanism will operate only where the customer is a reseller of the goods (traders habitually engaging in the resale of these goods) or, otherwise, where the total amount of supplies to one trader, documented in a single invoice (or in more than one, if there is evidence that it is a single transaction, broken down artificially so as not to overstep the quantitative threshold stipulated by the rule), exceed €10,000.

These transactions must be documented using a special invoice series and the acquirer's status as trader must be proven before or simultaneously with the acquisition.

In the field of VAT, the draft regulations provide that the customers of the transactions must expressly prove to the vendor, by duly authenticated means, that they have the status of trader or, as the case may be, the status of reseller, in the latter case with a specific certificate issued via the State Tax Agency's website, since they will have to notify the tax authorities of their status by filing the appropriate business taxation status notification form.

These new reverse-charge mechanism scenarios will not come into force until April 1, 2015, so as to enable interested parties to adapt their systems accordingly.

1.14 Tax rate applicable to medical equipment and medicinal substances (VAT)

In 2010, the European Commission initiated an EU law infringement proceeding against Spain, in its preliminary administrative phase, on the ground that the application of reduced rates to the following infringed the VAT Directive:

- medicinal substances which can be used habitually and suitably in the manufacturing of medicinal products;
- medical devices, material, equipment and appliances which, viewed objectively, can only be used to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, but which are not "*normally intended to alleviate or treat disability, for the exclusive personal use of the disabled*";
- aids and equipment which may be used essentially or primarily to treat physical disabilities in animals; and
- aids and equipment essentially or primarily used to treat human disabilities, but which are not intended for the exclusive personal use of the disabled.

As Spain did not adopt the Commission's position, the Commission brought an action before the Court of Justice on July 8, 2011, which was settled in a judgment finding against Spain on January 17, 2013.

In order to adapt the legislation to the conclusions in the Court of Justice judgment, the list of goods subject to the reduced rate of 10% has been modified.

Only the following will benefit from the reduced rate:

- medicinal products for veterinary use;
- certain pharmaceutical products that can be used by the consumer (those included in chapter 30 of the Combined Nomenclature, which is included in an exhibit to this commentary);
- sanitary towels, tampons, panty liners, condoms and other non-medicinal contraceptives; and
- the equipment, medical aids and other appliances listed in a new annex eight to the law (which include, among others, prescription glasses and contact lenses) designed to alleviate or treat physical, mental, intellectual or sensorial disabilities in humans and are for personal use.

The 4% rate is reserved for medicinal products for human use, pharmaceutical forms, pharmaceutical compounding products and officinal preparations. This rate is also maintained for vehicles for persons with reduced mobility and for the supply of prostheses, orthoses, and internal implants for disabled persons.

The Ministry is expected to publish implementing provisions aimed at clarifying the scope of the goods to which each of the tax rates is to apply.

Lastly, the 10% rate is reintroduced for ornamental flowers and plants and the vegetable products used to obtain them.

1.15 Deductions (VAT and Canary Islands general indirect tax)

First, a technical correction is made in the field of VAT, changing the requirement for tax to have been "paid" in order for it to be "deductible", given that the requirement for the payment of VAT on imports had already been eliminated.

Also in line with the position taken by the Court of Justice of the European Union, a specific article is introduced in connection with both VAT and the Canary Islands general indirect tax, aimed at establishing the methods to be used to determine the amount of deductible tax by reference to use in business and non-business activities in the case of public entities that carry out both types of transactions (referred to as "dual enterprises").

The law simply refers to the use of reasonable and homogeneous distribution methods (and to their being retained over time except on reasonable grounds) and to the option of applying provisionally the calculation resulting from the preceding calendar year until it is adjusted at the end of the year.

An interesting point to note is that in the bill's passage through Parliament, the option of taking into account the proportion of revenues obtained from one activity or the other was eliminated.

Moreover, the computation of the general deductible proportion applicable to common inputs, in the deduction rules for different sectors of the business, excludes the transactions performed under the special VAT grouping scheme.

Lastly, in relation to VAT, the option of applying the obligatory special deductible proportion has been broadened to apply in cases where the sum of deductions in the general deductible proportion exceeds by 10% the result of applying the special deductible proportion.

In relation to the Canary Islands general indirect tax, this option is introduced for the first time in the law, replacing the cases that to date required application of the special deductible proportion.

1.16 Refunds to traders not established in the EU (VAT)

The reciprocity requirement is eliminated for the input VAT on hotel, restaurant and transport services related to attending and entering trade fairs, conferences and exhibitions, and in relation to acquisitions or imports of molds, templates or equipment used to manufacture goods that are exported for delivery to the non-established trader, where that equipment is also exported or destroyed when its use has ended.

1.17 Deferred import VAT (VAT)

Another of the significant changes introduced in the legislation refers to the settlement of VAT on imports.

As we all know, upon importation, the customs authorities calculate the customs duties and the VAT on imports. Both must be paid, even if the document containing the VAT charge authorizes the deduction of the VAT charge on the ordinary VAT returns to be filed by the taxable person.

The customs authorities will continue to calculate the VAT on imports, but as from January 1, 2015, the tax can be collected and paid on the tax return for the period in which that calculation is received, which will avoid the financial effect of paying the tax to the Public Treasury and later recovering it by deducting it on the periodic returns.

The draft regulations implementing the law provide that all taxable persons filing monthly returns may choose to apply this system in a business taxation status notification form (*declaración censal*) filed in the November before the year in which the system is to take effect, which gives this measure a broad scope. As an exception, in 2015 the election may be made in January.

The law also provides that any proceedings for inspection, limited review and verification of data relating to the VAT chargeable on imports will be those stipulated in the General Taxation Law, subject to the special provision that the subject-matter of these proceedings will be confined to checking compliance with the tax obligation in relation to this taxable event, and cannot be expanded into an inspection proceeding. It also expressly establishes that the payment of the assessed amount of tax in these proceedings in cases subject to the new deferral system for imports described above, will be made using the same system (inclusion in the periodic tax return together with the deduction of the tax charges).

1.18 Settlement of the Canary Islands general indirect tax

The law establishes a new option for the tax authorities to initiate a proceeding to issue a provisional assessment after the end of thirty days from when the taxable person is requested to file the self-assessment that it did not file on time, unless the breach is remedied or the taxpayer proves there was no obligation to do so.

These provisional assessments will be enforceable immediately upon their notification, although the taxpayer can file the relevant claims.

1.19 Special simplified schemes and schemes for agriculture, livestock and fisheries (VAT)

The quantitative limits enabling the application of the simplified regime and the requirements in relation to taxable persons and amounts for applying the special scheme for farming, livestock and fishing activities are reduced (the latter taking effect on January 1, 2016), and some technical corrections are made in the VAT legislation in relation to real estate transfers in the compensatory charge scheme.

1.20 Special scheme for travel agencies (TOMS - VAT)

In order to bring the law into line with the Court of Justice judgment of December 26, 2013, the law introduces various changes in the special scheme for travel agencies:

- It has been expressly added that the scheme applies to transactions carried out by any trader that involve it acting in its own name in the hiring of accommodation or transport services for the benefit of a third party.
- There is no longer the option to state on the invoice by adding "VAT included in the price" the amount resulting from multiplying by 6 and dividing by 100 the price of the transaction and for this amount be deemed to be input VAT for the customer for the purposes of making its deductions.
- Nonetheless, where the customer is a trader, the standard tax scheme may be elected; this election, according to the draft regulations, must be made for each transaction and notified in writing to the customer before or simultaneously with the supply, which will be deemed to have occurred if the issued invoice makes no reference to application of the special scheme for travel agencies.
- There is no longer the option to determine the taxable amount on an aggregate basis for each tax period.

1.21 Special VAT grouping scheme: companies eligible for inclusion (VAT and Canary Islands general indirect tax)

Spanish legislation allows this scheme to be applied to a parent company and its subsidiaries where the parent company owns at least a 50% interest in the subsidiary's capital stock.

In 2009, the Commission published a Communication to the Council and to the European Parliament with its interpretation of the provisions of the Directive in respect of what Spain has transposed as the Special Grouping Scheme.

In that Communication, in relation to the entities that can be treated as a "single taxable person", the Commission supports, based on the literal wording of the Directive, the simultaneous existence of financial, economic and organizational bonds which, in the Spanish law, had been transposed simply by referring to the aforementioned minimum interest of 50%.

The following changes were introduced exclusively with respect to VAT in connection with the companies eligible for inclusion in the group:

- Taking into account the position taken by the Court of Justice of the European Union, companies not treated as traders or professionals can be treated as parent companies of the group.
- In order to bring the Spanish law into line with the interpretation set forth in the Commission Communication, Spain has modified the requirements for applying the scheme that relate to the companies in the group, and therefore, effective on January 1, 2015, there must be financial, economic and organizational links.

Thus, the legislation requires that the parent company must have effective control over its subsidiaries, by owning more than 50% of their capital or voting rights.

The draft regulations, which define those links, also define the financial bond in the same way (owning more than 50% of their capital or voting rights).

The economic link will relate to the performance by the entities of the same activities, or of activities that complement each other, and the organizational bond will mean that the entities have common management.

The existence of these last two links is presumed, according to the draft regulations, if the requirement for the financial one is met.

Lastly, this new definition of the grouping is deferred until January 1, 2016 for entities that had already been applying the scheme when the amendment came into force.

With respect to the Canary Islands general indirect tax, an additional provision adds the option for banking foundations that own an interest equal to or greater than 30% in the capital of a credit institution or an interest that enables them to have control over the institution, which are traders or professionals and are established in the territory where the Canary Islands general indirect tax applies, to be treated as dependent entities for the purpose of applying the special grouping scheme.

This treatment is extended to apply to entities where the foundations own directly or indirectly a 50% or higher interest in their capital.

The law also provides that any credit institution that determines, on a binding basis, the group's business policies and strategies and its internal and management control will be treated as the parent company.

1.22 New types of infringements (VAT and Canary Islands general indirect tax)

The following tax infringements are established:

- The failure to communicate in time or the incorrect communication of the performance of activities as traders in the reverse charge mechanism scenarios applicable to supplies of buildings, which is penalized with a proportional fine equal to 1% of the tax charge relating

to the transactions in which the breach takes place, subject to a minimum of €300 and a maximum of €10,000.

- The failure to communicate in time or the incorrect communication of the performance of activities as traders and of the nature of the works in the reverse charge mechanism scenarios applicable to the performance of construction works, which is penalized with a proportional fine equal to 1% of the tax charge relating to the transactions in which the breach takes place, subject to a minimum of €300 and a maximum of €10,000.
- In the field of VAT, the failure to report or the incorrect or incomplete reporting of the VAT calculated on imports on the VAT return in the cases where this is required also constitutes an infringement, which could be penalized with a fine of 10% of the amount of the calculated VAT charge.
- In the field of the Canary Islands general indirect tax, the failure to report on the relevant return the tax charge for which the customer is the taxable person in any supplies of investment gold in which the exemption has been waived..

The applicable penalty in this case will be that envisaged to date for the reverse charge mechanism scenarios and will consist of a proportional fine equal to 75% of the tax charge relating to the transactions not reported on the return.

All of the above penalties will be subject to the reductions established in the General Taxation Law.

1.23 Liability of the owner of a tax warehouse other than a customs warehouse (VAT)

Starting January 1, 2016, the owner of a tax warehouse other than a customs warehouse will be secondarily liable for the payment of the tax debt that arises from the exit of the goods, unless the goods are subject to excise taxes.

1.24 Reimbursement of tax on imports of goods (VAT)

Effective April 1, 2016, the law repeals the provision that in certain circumstances permits the reimbursement of the VAT on imports that was paid by customs representatives who were acting in their own name and on behalf of the importers.

1.25 Authorization to amend the provisions regulating certain elements of the tax (Canary Islands general indirect tax)

Additional provision nine of the Canary Islands General Indirect Tax Law is amended to allow the General State Budget Laws to amend the provisions on exemptions for exports, transactions treated as exports and imports, the place where the taxable event occurs and the deduction of the tax. All of these cases will be subject to a prior report from the Canary Islands autonomous community government.

Consequently, the General Budget Laws of the Canary Islands autonomous community Government may amend the provisions on exemptions for domestic transactions, tax rates and special schemes.

1.26 Levy on imports and supplies of goods in the Canary Islands

As regards the levy on imports and supplies of goods in the Canary Islands (the "AIEM", after its initials in Spanish), the references made to certain provisions of Law 20/1991 relating to the AIEM now refer to the relevant articles of Law 4/2014, of June 26, 2014, amending the provisions regulating the AIEM, which entered into force on July 1, 2014.

2. Excise and special taxes

Following is a description of the three main categories of the reforms in the field of excise and special taxes:

2.1 Electricity tax

The reform of the electricity tax consists of an overhaul of this tax, which changes from being configured as an excise tax on production to being configured as a tax that is levied on the supply of electricity for consumption or self-consumption by electricity producers.

This reconfiguration implies comprehensive provisions on all the elements of this tax in a separate chapter, with the elimination of all references to the articles on the excise taxes on production, although ultimately the environmental element has not been taken into consideration, despite the recommendations of the Report by the Committee of Experts for the Reform of the Tax System.

The main amendments are the 85% reduction in the tax base for industrial activities in which the electricity they consume accounts for 50% of the cost of a product or for industrial activities in which purchases or consumption of electricity account for at least 5% of the value of the output, similarly to what is already established in the law for other cases.

Moreover, from a procedural standpoint, the registration obligations are confined to the operators that make supplies of electricity and to the beneficiaries of certain exemptions and reductions in the tax base, which brings down the administrative costs, notwithstanding the obligations for taxable persons not established in Spain. The registrations already made in the context of the former electricity tax will be valid for purposes of the new tax.

2.2 Tax on fluorinated greenhouse gases

Law 16/2013, of October 29, 2013, establishing certain environmental taxation measures and adopting other tax and financial measures, introduced a new tax on fluorinated greenhouse gases in order to correct the environmental externalities generated by halogenated hydrocarbons, including most notably its negative contribution to global warming.

This tax is configured as an indirect tax that is levied on the consumption of hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆) and it taxes, in a single phase, the consumption of these products based on their global warming potential.

The main amendments introduced, essentially of a technical nature, are as follows:

- The definitions of "final consumer" and "re-seller", hitherto only contained in the law regulations, are now included in the Law.

- The import and intra-Community acquisition of gases contained in products the use of which inherently leads to the emission of such gases into the atmosphere, such as aerosols, polyurethane and extruded polystyrene foams and systems, among others, are now included within the scope of taxable transactions.
- Losses of gases subject to the tax as a result of inaccuracies of measurement instruments are treated as nontaxable insofar as it can be evidenced that these losses fall within the weight tolerance limits specified in the relevant certificate of the measurement instrument, officially approved in accordance with the certification program established by the International Organization for Legal Metrology.
- New exemptions are introduced which are associated with recharges in equipment, appliances or installations to replace other gases under certain conditions; with supplies of vessels or aircraft that engage in international sea or air navigation; with supplies to officially recognized education or research centers and trial and research laboratories (95% exemption); and with those destined for the armed forces in fire extinguishment equipment (95% exemption).
- The exemption provided for the first sale or supply of gases with a global warming potential equal to or less than 3,500 for inclusion in fixed fire extinguishment systems is increased from 90% to 95%.
- A special regime for the polyurethane industry is introduced, according to which the tax rate applicable to fluorinated gases used to produce polyurethane or imported or acquired in polyurethane that has already been manufactured will be the result of multiplying the tax rate applicable according to its global warming potential by 0.10.

2.3 Other issues

Amending certain provisions to give greater legal certainty to taxpayers and, in particular:

- (i) in the field of excise tax on oil and gas, a clarification is included regarding the tax charge on natural gas, establishing that the special rule on the chargeability for supply contracts for a consideration does not apply where the supply to the final consumer is done other than through fixed piping, thereby giving the status of law to the administrative interpretation made in ruling number V0196-14 issued by the Directorate-General of Taxes; and
- (ii) with respect to the penalty regime set out in the excise and special taxes legislation, establishing greater detail in the definition of the infringements.

The legislative amendments include new minimums for serious infringements and increase the amount of penalties, in relation to the possession for commercial purposes of alcoholic beverages or tobacco products that do not bear the fiscal markings established by regulations, but reducing the scale of the penalty for repeated commission of this type of infringement.

Although the legislation will enter into force on **January 1, 2015**, the changes to the tax on fluorinated greenhouse gases (except for new exemptions and the new special regime for the polyurethane sector) will apply from **January 1, 2014**.

Exhibit I

**Pharmaceutical products included in
Chapter 30 of the Combined Nomenclature**

30	CHAPTER 30 – PHARMACEUTICAL PRODUCTS
3001	Glands and other organs for organo-therapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organo-therapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included
3001 20	■ Extracts of glands and other organs or of their secretions
3001 20 10	● Of human origin
3001 20 90	● Other
3001 90	■ Other
3001 90 20	● Of human origin
	● Other
3001 90 91	◆ Heparin and its salts
3001 90 98	◆ Other
3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures or micro-organisms (excluding yeasts) and similar products
3002 10	■ Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes
3002 10 10	● Antisera
	● Other
3002 10 91	◆ Haemoglobin, blood globulins and serum globulins
3002 10 98	◆ Other
3002 20 00	■ Vaccines for human medicine
3002 30 00	■ Vaccines for veterinary medicine
3002 90	■ Other
3002 90 10	● Human blood
3002 90 30	● Animal blood prepared for therapeutic, prophylactic or diagnostic uses
3002 90 50	● Cultures of micro-organisms
3002 90 90	● Other
3003	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale
3003 10 00	■ Containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives
3003 20 00	■ Containing other antibiotics
	■ Containing hormones or other products of heading 2937 but not containing antibiotics
3003 31 00	● Containing insulin
3003 39 00	● Other

3003 40	<ul style="list-style-type: none"> ■ Containing alkaloids or derivatives thereof but not containing hormones or other products of heading 2937 or antibiotics
3003 40 20	<ul style="list-style-type: none"> ● Containing ephedrine or its salts
3003 40 30	<ul style="list-style-type: none"> ● Containing pseudoephedrine (INN) or its salts
3003 40 40	<ul style="list-style-type: none"> ● Containing norephedrine or its salts
3003 40 80	<ul style="list-style-type: none"> ● Other
3003 90 00	<ul style="list-style-type: none"> ■ - Other
3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting or mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale
3004 10 00	<ul style="list-style-type: none"> ■ Containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives
3004 20 00	<ul style="list-style-type: none"> ■ Containing other antibiotics ■ Containing hormones or other products of heading 2937 but not containing antibiotics
3004 31 00	<ul style="list-style-type: none"> ● Containing insulin
3004 32 00	<ul style="list-style-type: none"> ● Containing corticosteroid hormones, their derivatives or structural analogues
3004 39 00	<ul style="list-style-type: none"> ● Other
3004 40	<ul style="list-style-type: none"> ■ Containing alkaloids or derivatives thereof but not containing hormones, other products of heading 2937 or antibiotics
3004 40 20	<ul style="list-style-type: none"> ● Containing ephedrine or its salts
3004 40 30	<ul style="list-style-type: none"> ● Containing pseudoephedrine (INN) or its salts
3004 40 40	<ul style="list-style-type: none"> ● Containing norephedrine or its salts
3004 40 80	<ul style="list-style-type: none"> ● Other
3004 50 00	<ul style="list-style-type: none"> ■ Other medicaments containing vitamins or other products of heading 2936
3004 90 00	<ul style="list-style-type: none"> ■ Other
3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes
3005 10 00	<ul style="list-style-type: none"> ■ Adhesive dressings and other articles having an adhesive layer
3005 90	<ul style="list-style-type: none"> ■ Other
3005 90 10	<ul style="list-style-type: none"> ● Wadding and articles of wadding ● Other <ul style="list-style-type: none"> ◆ Of textile materials
3005 90 31	<ul style="list-style-type: none"> ✓ Gauze and articles of gauze
3005 90 50	<ul style="list-style-type: none"> ✓ Other
3005 90 99	<ul style="list-style-type: none"> ◆ Other
3006	Pharmaceutical goods specified in note 4 to this chapter
3006 10	<ul style="list-style-type: none"> ■ Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics, sterile surgical or dental adhesion barriers, whether or not absorbable
3006 10 10	<ul style="list-style-type: none"> ● Sterile surgical catgut
3006 10 30	<ul style="list-style-type: none"> ● Sterile surgical or dental adhesion barriers, whether or not absorbable
3006 10 90	<ul style="list-style-type: none"> ● Other
3006 20 00	<ul style="list-style-type: none"> ■ Blood-grouping reagents
3006 30 00	<ul style="list-style-type: none"> ■ Opacifying preparations for X-ray examinations; diagnostic reagents designed to be

		administered to the patient
3006 40 00	■	Dental cements and other dental fillings; bone reconstruction cements
3006 50 00	■	First-aid boxes and kits
3006 60 00	■	Chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides
3006 70 00	■	Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments
	■	Other
3006 91 00	●	Appliances identifiable for ostomy use
3006 92 00	●	Waste pharmaceuticals

Exhibit II**List of medical equipment, appliances and instruments qualifying for the 10% rate (new annex eight to the law)**

- Prescription eyeglasses, contact lenses and the products necessary for their use, care and maintenance.
- Lancing devices, automatic glucose monitoring devices, devices for administering insulin and other appliances for the self-monitoring and treatment of diabetes.
- Devices for the self-monitoring of ketone bodies and of blood coagulation and other devices for the self-monitoring and treatment of incapacitating diseases, such as morphine and cancer medication drip systems.
- Urine collection bags, absorbent pads for incontinence and other systems for urinary and rectal incontinence, including irrigation systems.
- Prostheses, orthoses, orthoprotheses and surgical implants, in particular those listed in Royal Decree 1030/2006, of September 15, 2006, establishing the common services portfolio of the National Health System and the procedure for updating them, including their components and accessories.
- Tracheostomy and laryngectomy tubes.
- Therapeutic chairs and wheelchairs, as well as seat pads and harnesses for their use, crutches, walkers and hoists for moving disabled persons.
- Elevator platforms, wheelchair lifts, wheelchair adaptors for stairs, portable ramps and self-supporting handrails and grab bars.
- Appliances and other instruments designed to reduce internal lesions or malformations, such as jockstraps or compression stockings for varicose veins.
- Home dialysis and respiratory therapy devices.
- Medical equipment, appliances and other instruments used to compensate a defect or disability, designed for the personal and exclusive use of persons with deficient vision and hearing.
- The following support products designed for the personal and exclusive use of persons with physical, mental, intellectual or sensorial disabilities:
 - support products for dressing and undressing; shoehorns and bootjacks with special handles for reaching down to the floor, hangers, hooks and rods to hold clothing in a fixed position;
 - bathroom assist products: lifts, armrests and backrests for the toilet;
 - support products for washing, bathing and showering: brushes and sponges with special handles, chairs for bath or shower, transfer benches for bathtubs, stools, support products to reduce bathtub length or depth, grab bars and support frames;

- support products to enable the use of new information and communication technologies, such as mouse devices for cephalic or ocular movements, high contrast keyboards, blink detection devices, software to enable persons with severe motor disabilities to write and to use the device with their voices;
- support products and devices enabling persons with severe motor disabilities to grip, operate, reach objects: long reachers and grabbers;
- functional stimulators.

GARRIGUES

www.garrigues.com

Follow us:



This publication contains information of a general nature and does not constitute a professional opinion or legal advice.

© J&A Garrigues, S.L.P., all rights reserved. The exploitation, reproduction, distribution, public communication or transformation, in whole or in part, of this document is prohibited without the written consent of J&A Garrigues, S.L.P.

Hermosilla, 3 - 28001 Madrid (Spain).

Tel. +34 91 514 52 00 Fax +34 91 399 24 08