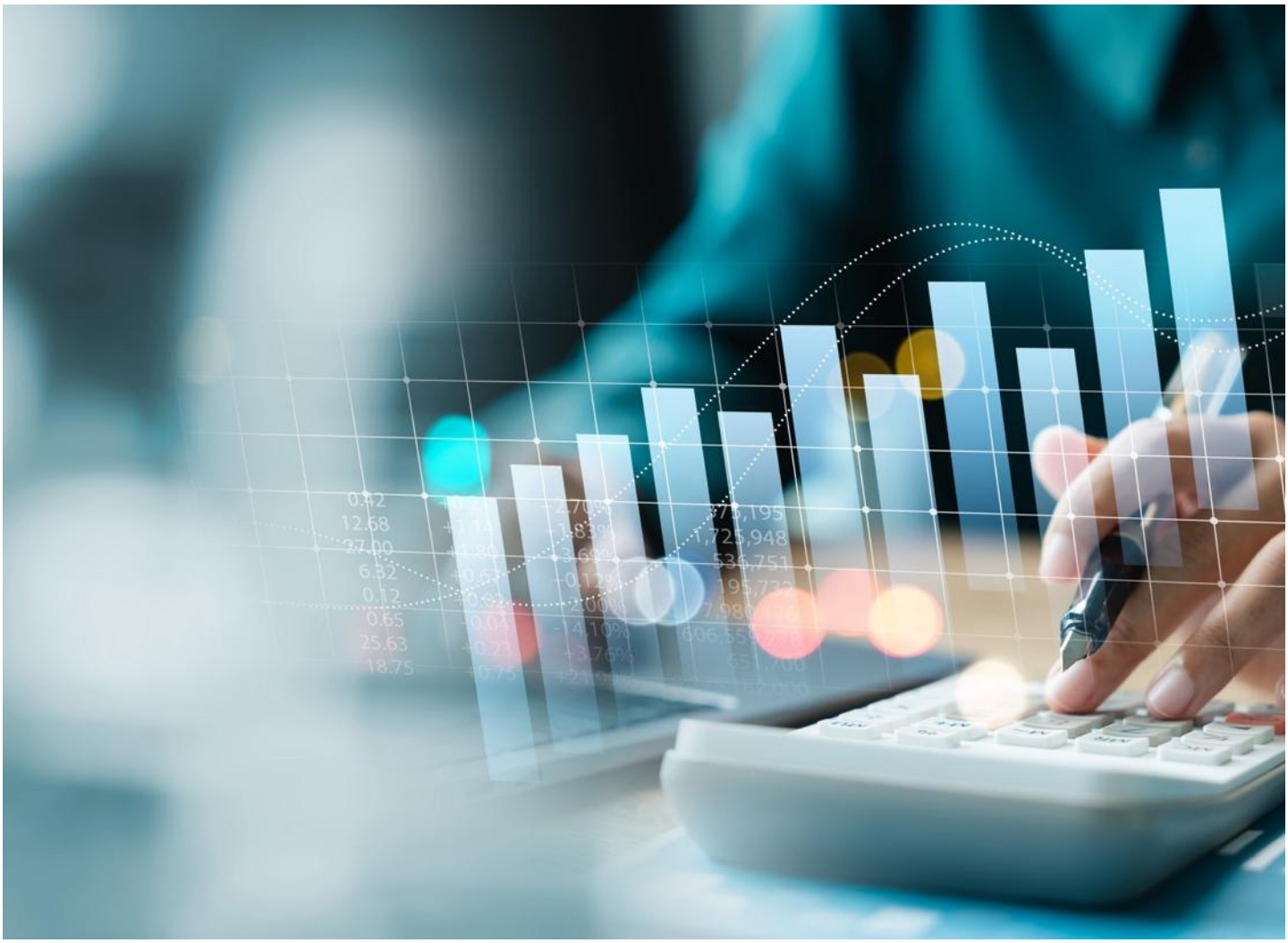
GARRIGUES

Tax Newsletter

May 2026

This newsletter provides a compilation and summary of relevant legal news for the practice of tax law (judgments, decisions by the economic-administrative tribunals, resolutions by the Directorate General for Taxes (DGT), legislation, and other news).



Key judgments

Entry into a taxpayer's home requires particular attention to how the taxpayer gives consent

Spanish Supreme Court stresses that taxpayers must be properly informed before a home search takes place, so that they can give their consent adequately.

In judgments dated March 12, 17, and 25, 2026, the Supreme Court revisited the requirements for tax auditors to enter taxpayers' homes. The judgments focus on the requirements to be met in obtaining the taxpayer's consent for it to be considered lawfully obtained and conclude that the obligation to provide prior and complete information cannot be deemed satisfied simply by providing the information attachment typically accompanying the notice initiating an audit. The court noted that this annex makes no mention of the right to deny entry or even to allow entry and subsequently revoke that consent. The judgments, however, do not resolve important questions in this area, such as whether distinctions are needed based on the scope of the audit activities and the type of documents required in the search.

In another recent judgment, dated April 14, 2026, concerning a labor inspection, the Supreme Court underlined that judicial authorization for entry is an essential requirement, even if a search of the premises is not conducted, although it is not needed if access is only gained to work areas separate from the offices belonging to the registered office.

These and other judgments are analyzed in detail in our post on the Garrigues Tax Blog dated May 26, 2026.

Tax procedure

Period for enforcing secondary liability begins when principal debtor's insolvency has been determined sufficiently

Supreme Court. Judgment of April 30, 2026

The Supreme Court has set a legal precedent for calculation of the statute of limitations in connection with the enforcement of secondary tax liability under article 43.1.a) of the General Taxation Law (LGT), where the principal debtor is in bankruptcy proceedings. According to the court, rather than the date of the formal declaration of the debtor's inability to pay, the start date for that period is when sufficient proof has been provided of the debtor's insolvency in the form of objective items of evidence, even if that declaration occurs later. This principle, based on the doctrine of *actio nata,* prevents the tax authorities from unjustifiably delaying the start of this period.

The court specified further that a state of insolvency may be determined within the bankruptcy proceedings themselves, based, for example, on reports from the insolvency practitioner that provide clear and sufficient evidence of insufficient assets to meet the debts.

Economic Accord with the Basque Country: the registered office must be the tax domicile unless proof is provided that management and administration take place in another territory

Supreme Court. Judgment of April 16, 2026

Article 43 of the Economic Accord with the Basque Country contains a stepped rule for determining the tax domicile of legal entities: the first option is the registered office, if this is where the administrative management and running of the business are actually centralized; otherwise, the place where the management and running of the business are carried out; and, alternatively, if those tests fail to determine the location of the tax domicile, the place where it has fixed assets with the highest value.

The Supreme Court held that the registered office must be presumed to be the tax domicile and therefore the burden of proving that administrative and business management takes place at another address lies with the party seeking to rebut this presumption. The last option, regarding the location where fixed assets with the highest value are located, can only be applied if the others fail.

Where a bank account contains both attachable and non-attachable amounts, the origin of the funds in the account must be analyzed to determine whether it can be attached

Central Economic-Administrative Tribunal. Decisions of April 30, 2026 (2088/2024 and 4803/2024)

Applying the principle set out in its decision dated June 18, 2025 (September 2025 newsletter), the Central Economic-Administrative Tribunal (TEAC) has ruled that, where a bank account contains both non-attachable amounts (wages, salaries, or pensions below the minimum wage) and other attachable income, it is not sufficient to consider the whole balance of the account to determine whether it can be attached (because the non-attachable portion does not become savings simply because it has not been spent). Instead,

the origin of the balance existing at the time of attachment must be analyzed. As follows:

a. If an analysis of movements in the account shows that the balance at the time of the attachment relates exclusively to attachable funds, the entire balance can be attached.

b. If it is not possible to determine the origin of the funds, it must be presumed that the amounts used first relate to non-attachable income, calculating the protected amount by reference to salaries, wages, or pensions at the time of their payment into the account; and, once the attachable portion has been determined, the attachment must be applied to the balance existing at the time it is made, and all or part of that amount may be attached.

An ordinance may be appealed by relying on case law that did not exist at the time of an earlier appeal against the same local law

Supreme Court. Judgment of March 24, 2026

The Supreme Court has concluded that an appeal against a tax ordinance on a local tax, which had previously been reviewed and confirmed by a court, cannot be dismissed on the ground of res judicata if the appellant relies on a legal doctrine that did not exist when that court first reviewed the ordinance.

Succession in ownership or in the conduct of activities in the context of insolvency proceedings does not preclude enforcement of secondary liability under the doctrine of lifting the corporate veil

Central Economic-Administrative Tribunal. Decision of March 17, 2026

Article 42.1.c) of the General Taxation Law governs joint and several liability arising from succession in ownership or the conduct of economic activities, although it exempts from its application acquisitions that take place in the context of insolvency proceedings.

TEAC has concluded that this exemption does not per se preclude the imposition of tax liability by other means, in particular through the enforcement of secondary liability based on the doctrine of piercing the corporate veil. Therefore, where the legal requirements are met, the tax authorities can rely on articles 43.1.g) and h) of the LGT (concerning cases of effective control and the abusive or fraudulent use of legal entities to evade debts), even in the context of transfers in insolvency proceedings.

The "two shot" rule also applies in matters related to the cadaster

Murcia High Court. Judgment of March 12, 2026

The Murcia High Court has affirmed that the "two shot" rule determined by the Supreme Court applies in matters related to the cadaster and, based on that doctrine, concluded that a third decision issued by the Cadaster following the setting aside of two earlier decisions cannot be upheld, regardless of the grounds for setting them aside (procedural or substantive).

Preclusive effect of a limited review prevents the tax authorities from commencing a subsequent audit on the same items unless new facts arise

Galician High Court. Judgment of February 19, 2026

Drawing on the Supreme Court's doctrine on the principle of preclusion as defined in article 140.1 of the General Taxation Law, the Galician High Court pointed out that the preclusive effect bars a new adjustment if the tax authorities already had all the necessary information in an initial audit, unless there are genuinely new facts arising from separate proceedings.

Special tax regime for nonprofit entities does not apply automatically

Central Economic-Administrative Tribunal. Decision of February 19, 2026

TEAC has concluded that among the requirements for the special tax regime for nonprofit entities as set out in Law 49/2002 of December 23, 2002, the option must be expressly elected in a notification to the tax authorities and therefore does not apply automatically simply because the eligibility tests for that regime are met.

According to the court, the requirement for that notification does not imply discrimination against nonresident entities, insofar as the requirements are equally applicable to any entity and respond to the need to monitor a privileged tax regime. Therefore, failure to comply with this requirement does not violate the principles of free movement of capital or of nondiscrimination.

Suspension interest cannot be charged for periods of delay attributable to the tax authorities

National Appellate Court. Judgment of February 6, 2026

The dispute centers on determining whether an assessment of late-payment interest made by the tax authorities after issuing a new assessment to implement a partially favorable decision was in accordance with the law.

The Chamber analyzed the interest charged in the enforcement phase and found that, after the appeal had been dismissed with respect to a portion of the disputed issues, the tax authorities should have enforced the partially favorable judgment within the two-month period set out in article 104.2 of the Law on the judicial review jurisdiction. Consequently, it concluded that interest could only accrue until the end of that two-month period, and that interest for the subsequent period is unenforceable, because the delay is attributable exclusively to the tax authorities.

Corporate income tax and nonresident income tax

The parent company of a tax group can amend its self-assessment following a provisional assessment with respect to items that have not been adjusted

Supreme Court. Judgment of April 27, 2026

It was examined whether, following an audit of a tax group that concluded with a provisional assessment (because it did not cover all entities in the group), the parent company can request a correction to the self-assessment for one of the audited fiscal years, regarding a tax item not expressly adjusted, where the audit included all the tax items of the subsidiary responsible for the adjusted amount (specifically, an impairment provision).

The Supreme Court answered that it can, noting that these provisional assessments do not have the preclusive effect characteristic of final assessments. Therefore, they may be adjusted provided that the correction is based on a ground other than that considered in the provisional assessment, even if the item originates from a group subsidiary that was included in the audit.

Carried interest must be subtracted from income obtained from the transfer of shares for the purposes of applying the corporate income tax exemption

National Appellate Court. Judgment of April 9, 2026

The case concerned whether the carried interest paid by a private equity firm to another company in the same tax group should be classified as an ordinary management fee or as a cost directly linked to the transfer of shares, for the purpose of calculating exempt income under the special regime in article 55 of the Revised Corporate Income Tax Law (currently set out in article 50 of the Corporate Income Tax Law).

The Chamber rejected the arguments put forward by the appellant and held that the fee constitutes a cost directly attributable to the sale of the shares, which must reduce the amount of the capital gain obtained and, consequently, the tax base to which the 99% exemption under article 55 of the Corporate Income Tax Law is applied.

Corporate income tax return forms for the 2025 fiscal year have been published

Order HAC/529/2026, dated May 7, 2026, published in the Official State Gazette (BOE) on May 29, approves the corporate income tax return forms and nonresident income tax return forms for permanent establishments and pass-through entities formed in Spain, or in other countries with a presence in Spain, for the taxable periods commenced in 2025.

The filing deadline is July 27, 2026, for taxpayers whose fiscal year is the same as the calendar year (July 22, if direct debit is elected). The direct debit period for Form 242 now runs between July 1 and July 22 2026 (previously, until July 21).

Changes have been made to enable the Spanish Tax Agency (AEAT) to better carry out its role of monitoring and assisting taxpayers in fulfilling their obligation to self-assess the tax. Among other changes, the classification of the entity's primary activity has been adapted to the new 2025 Classification of Economic Activities, "CNAE-2025," technical improvements have

been introduced to the self-assessment correction process, and, for taxpayers subject to "foral" provincial legislation, returns can be filed in machine-readable format using Extensible Markup Language (XML), which must be done on AEAT's electronic portal for subsequent conversion.

As in previous years, forms have also been published for supplying information on certain corrections and reductions to income per the income statement amounting to €50,000 or more (Annex III), the annual report on completed activities and projects and researchers eligible for social security tax credits (Annex IV), the reserve for investments in the Canary Islands (Annex V), and the reserve for investments in the Balearic Islands (Annex VI).

The order will take effect on July 1, 2026, and will apply to tax returns covering periods commenced between January 1 and December 31 2025.

Personal income tax

Severance pay for a professional partner is not classed as multi-year income if it is not remuneration for a sustained activity

Supreme Court. Judgment of May 4, 2026

The Supreme Court has rejected application of the 30% reduction (provided for income generated over more than two years) to severance payments received in respect of unilateral termination of the contract of a professional partner. According to the court, the decisive factor is not the length of the professional relationship or the bylaw provisions on termination but rather the existence of a genuine period in which the income was generated.

The reduction is therefore only applicable if proof can be provided that the income is remuneration for effort or an activity carried out uninterruptedly for more than two years and is allocated to a single fiscal year. If, conversely, the severance payment is a direct result of early termination and its amount is not related to length of service or the actual time services were provided, but rather to other factors (such as recent compensation or proximity to retirement age), the income is deemed to have been generated at the time of termination.

New principles published on the time limit for applying the personal income tax exemption for reinvestment in a primary residence

Central Economic-Administrative Tribunal, in decisions dated January 27 and April 7, 2026; and the Madrid Regional Economic-Administrative Court (TEAR), in a decision dated November 25, 2025

To apply the reinvestment exemption to a transfer of a residential property that property must qualify as the taxpayer's principal residence. In other words, the taxpayer must have resided there uninterruptedly for at least three years; although the law allows an exception to this time requirement for circumstances necessitating a change of residence, such as marital separation. Furthermore, the rules lay down that the proceeds of the sale of the residence to which the exemption applies must be reinvested within a two-year period (either before or after the sale). On the subject of these requirements:

a. In two new decisions, TEAC has determined that the exemption cannot be applied where the transfer occurs more than two years after the property ceased to be the taxpayer's principal residence, even if that change of residence was due to work-related reasons. It clarified in this connection that the principle determined by the Supreme Court in a judgment delivered on May 5, 2023 (May 2023 newsletter) which relaxes this requirement, applies only to cases of separation, divorce, or annulment of marriage, but not to relocations for work-related reasons.

b. By contrast, the Madrid Regional Tax Tribunal (TEAR) has held that the exception to the requirement that the transferred residence must have acquired the status of principal residence can apply in cases of breakups between couples in registered partnerships (*parejas de hecho*), provided that proof is provided of the need to transfer the residence in a shorter period — in other words, that it is not simply a matter of convenience for the taxpayer. That need will not be deemed to exist, for example, if the taxpayer is the sole owner of the property, because in that case the fact of ceasing to live together does not make it necessary to sell the property (unlike in cases of co-ownership).

TEAC acknowledges that property leasing qualifies as an economic activity where management is carried out using human and material resources centralized within the group

Central Economic-Administrative Tribunal. Decision of March 20, 2026

To determine whether property leasing qualifies as an economic activity and, therefore, whether the wealth tax exemption and the inheritance and gift tax reduction can be applied, there must be at least one full-time employee managing the activity.

TEAC has changed its interpretation in light of the supreme court judgments dated February 17 and 19, 2026 (February 2026 newsletter) and allowed the requirement for a full-time employee to be met where the company belongs to a business group that has the necessary human and material resources, even if they are centralized at other entities within the group, provided that there is genuine functional integration and a single activity at the group level really exists. Applying this principle to the case under examination, TEAC rejected application of the inheritance and gift tax reduction because no evidence had been provided of either a shared use of resources within the group or a functional integration of the lessor's activity into the group.

An excess distribution is not a gift if it relates to a reciprocal offset among co-heirs

Galician High Court. Judgment of February 12, 2026

The tax authorities have held that an excess distribution resulting from the partition of an estate amounted to a transfer for consideration subject to inheritance and gift tax. The court examined the transaction and noted that the distribution carried out was part of an overall offset arrangement among co-heirs involving a cross-allocation of assets from two distinct estates. It concluded therefore that there is no *animus donandi*, because there is a reciprocal offset, even if not in the form of money, and therefore the excess distribution is not a taxable event for inheritance and gift tax purposes. The court upheld the appeal and set aside the assessment.

Amendment of net income indexes for objective assessment of personal income tax

Order HAC/484/2026, dated May 14, 2026 published in the Official State Gazette (BOE) on May 18, amends for 2025 the net income indexes to be applied under the personal income tax objective assessment method (IRPF) for agricultural and livestock activities affected by various exceptional circumstances.

Indirect taxes and customs duties

An intra-group transfer pricing adjustment does not per se constitute a taxable supply for VAT purposes

Court of Justice of the European Union. Judgment of May 13, 2026, Case C-603/24

The CJEU examined the VAT treatment of a transfer pricing adjustment between companies in a vehicle distribution group, which guaranteed the vehicle distributor a previously determined margin. This adjustment, calculated by reference, among other factors, to the costs incurred by the distributor for vehicle repairs, was implemented in the form of credit or debit notes issued by the manufacturer.

The national tax authorities considered that this adjustment constituted consideration in respect of a supply of services for consideration by the distributor. The CJEU rejected this conclusion on the ground that there was no legal relationship involving reciprocal obligations between the parties, relating to the supply of a specific identifiable service in exchange for the payment of remuneration in the form of that adjustment.

As to whether that adjustment constitutes a subsequent amendment of the purchase price of the vehicles, the CJEU stated that it is up to the national authorities to assess the effect of the adjustment on the determination of the taxable amount of the original supply of the vehicles.

The tax authorities for the taxpayer's tax domicile have the power to collect VAT for companies that are commencing operations

Supreme Court. Judgment of April 24, 2026

The Supreme Court has confirmed that, under article 33 of the Economic Accord with Navarra, when the trading or professional activities commence, the tax authorities for the place where the tax domicile is located have the power to collect VAT if the supply of goods or services has not yet begun, regardless of whether prior acquisitions have taken place. Once the supply of goods or services has begun, the volume of transactions can be used to determine the tax liability in each territory in accordance with the rules set forth in the Accord.

The court reasoned that the Economic Accord with Navarra constitutes a comprehensive and complete body of law with no gaps, which does not point to other sources of legislation, such as the VAT Law, to complete its provisions.

Services involving provision and maintenance of POS terminals are not exempt from VAT, although the input tax incurred on the purchase of the terminals is deductible

Central Economic-Administrative Tribunal. Decision of April 24, 2026

The appellant provided payment acceptance and management services ("acquiring services"), along with maintenance services for point-of-sale (POS) terminals and had treated

all of them as VAT-exempt pursuant to article 20.1.18(h) of the VAT Law. Tax auditors found, however, that the POS terminal maintenance services should be treated as subject to and not exempt from VAT.

The taxable person asked TEAC to allow the exemption and, failing that, accept its right to deduct the input VAT incurred on the purchase of the POS terminals.

TEAC confirmed that the provision of the POS devices does not fulfill the specific and essential functions of exempt financial transactions and that the POS acquiring and maintenance services are perceived by customers as two distinct and independent services. After confirming that the transaction is not exempt, TEAC concluded that the input VAT incurred on purchases of goods and services to be used to provide the POS terminal delivery and maintenance service was indeed deductible.

Assignment of a receivable does not transfer to the assignee the right to reduce the VAT taxable amount in the event of non-payment by the debtor

General Court of the European Union. Judgment of April 22, 2026, Case T-233/25

The General Court concluded that the VAT Directive precludes a person who acquires an assigned receivable from reducing, in the event of non-payment by the debtor, the VAT taxable amount for the transaction that gave rise to the receivable. According to the court, that right belongs exclusively to the taxable person who carried out the taxable transaction and charged the tax, regardless of whether that person has assigned the receivable under civil law. In other words, the right to reduce the taxable amount in the event of non-payment attaches to the taxable person who incurred the VAT and cannot be transferred under a private law agreement, regardless of national civil law provisions on the assignment of receivables.

Local Taxes

Supreme Court clarifies how to calculate tax on economic activities for activities carried out at premises or facilities located in more than one municipality

Supreme Court. Judgment of April 21, 2026

The Supreme Court examined the tax authorities' handling of the tax on economic activities in connection with an economic activity carried out at premises or facilities located in more than one municipality, and concluded that the authority to assess, collect, and administer the tax lies, exclusively and as a matter of its own jurisdiction, with the municipality in which the largest part of the area of the premises or facilities is located.

That local authority has the tasks of (i) issuing a single assessment applying the weighting multiplier and the location multiplier determined in its own tax rules, by reference to the whole area of the premises or facilities (including those located in other municipalities); and (ii) distributing the tax liability, increased only by the weighting multiplier, among the other municipalities in proportion to the area occupied by the premises or facilities in each municipality.

Autonomous community governments can appeal decisions of economic-administrative courts regarding measures ordered by them in exercising their delegated powers to conduct tax on economic activities audits

Supreme Court. Judgment of April 14, 2026

The Supreme Court has concluded that an autonomous community government to which the central government has delegated the power to audit the tax on economic activities in relation to a municipality is entitled to challenge in the judicial review jurisdiction a decision by an economic-administrative court concerning a measure ordered by that same regional government in exercising its delegated powers.

Interpretation of the definition of covered parking within mixed-use or integrated commercial activities at large retail stores for the purposes of the tax on economic activities

Central Economic-Administrative Tribunal. Decision of March 24, 2026

TEAC has concluded that a parking area covered only overhead by open sided metal canopies, which are lightweight and removable without any side enclosures, is not classed as "covered parking" for the purposes of the tax on economic activities. Therefore, that parking area is not counted to calculate the tax on economic activities liability in the captions under headings 661 —*"Mixed-use or integrated retail activities at large retail stores"*— in the tax classifications.

To calculate municipal capital gains tax on the sale of real estate comprising land and buildings, the land value must be taken from the title deeds documenting the transaction

General Directorate of Taxes. Resolution V0523-26 of March 5, 2026

The DGT has concluded that, in the sale of a property comprising land and a building, the land value used for calculating the liability for the tax on increase in urban land value (also known as the municipal capital gains tax) is the value, if any, that appears in the documents evidencing the transaction, provided that it is stated separately from the value of the building.

The statutory rule only applies if no separate amount is stated, and that rule requires the land value to be determined by reference to the proportion that the cadastral value of the land (as of the tax accrual date) bears to the total cadastral value of the property.

Other news

Various initiatives and programs have been declared events of exceptional public interest

Royal Decree-Law 12/2026, dated May 26, published on May 27, has declared a number of initiatives and programs to be events of exceptional public interest. It also sets out a tax regime for the final of the 2027 UEFA Men's Champions League, to be held in Madrid at the stadium of Club Atlético de Madrid, SAD. It contains measures regarding corporate income tax, nonresident income tax, personal income tax, the customs regime applicable to goods imported for use for the organization and holding of the final, and VAT (for which a special regime is introduced).

More information:
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GARRIGUES

Plaza de Colón, 2 - 28046 Madrid
T +34 91 514 52 00

info@garrigues.com
garrigues.com

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