

SPAIN

Name of the firm

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AT A GLANCE

Name of the tax

Value Added Tax

Local name

Impuesto sobre el Valor Añadido (IVA)

Date introduced

2nd of August 1985

Date of membership in EU

1st January 1986

Administered by

Ministerio de Hacienda - Tax Authorities
(www.aeat.es)

VAT rates

Standard

21%

Reduced

4% and 10%

Other

Exempt with and without credit supplies

VAT Number format

ES B1234567

VAT return periods

Quarterly or monthly when previous year turnover exceeded 6 M. Euros. Also monthly when registered in the monthly return system, for Companies with VAT recurrent credits.

Thresholds registration

None

Recovery of VAT by non-established

Businesses Yes

HISTORY OF VAT

In 1986 VAT was first introduced in Spain, with three different tax rates, 33% for luxurious goods, 12% and 6 % for necessary goods.

In January 1992, the first tax rate was eliminated and the general tax rate turned into 13% and in August turned into 15%.

Until 1993 there wouldn't be a third tax rate. A super-reduced rate was settled for first need goods (Bread, milk, eggs, vegetables, etc.)

With this VAT structure, a general rate, a reduced rate and a super-reduced rate, tax rates have been increasing since 1995.

From 1st of January 1995 (16%, 7%, 4%)

From 1st of July 2010 (18%, 8%, 4%)

From 1st of September 2012 until now (21%, 10%, 4%)

SCOPE OF VAT

According to Spanish VAT Law 37/1992 deliveries of goods and services that take place in the territory subject to Spanish VAT, by professionals or entrepreneurs, in the development of a usual or occasional activity, even when delivered in favour of partners, associates, members of the entities that develop them, shall be VAT subject.

VAT is such a complex tax that it is impossible to summarize it in an accurate and complete way in a few lines. For VAT purposes we normally distinguish VAT non subject activities and exempt activities.

Non VAT subject activities are those which in general terms make unsensible VAT applicability, like the delivery of professional or entrepreneurial patrimonies, the delivery of promotional and advertising goods, services rendered by employees, certain services rendered by public entities in return of taxes, or for example the delivery of money.

Exempt transactions are those which in general terms would be sensible to apply VAT on, but according to general interests, the different Countries recognize under EU Directive framework as exceptions to the application of VAT general rules, to enhance those interests.

Example of exempt goods or services, under quite concrete conditions would be:

- Sanitary services and delivery of certain health goods.

- Social Assistance services
- Education
- Financial and insurance services
- Real Estate delivery for living, etc..
- In a temporary way, energy or first necessity food.

REGISTRATION

Registration is compulsory for any entrepreneur, entity or professional developing any transaction with tax significance in Spain. The director of the Company meaning to get registered in Spain must apply for a NIE Number (Identification of foreigner Number).

The most common cases are, permanent establishment for VAT purposes, distance sales activities when exceeding the threshold or voluntarily, or import/export IntraEU purchases or deliveries from Spain.

The casuistry is enormous and it is always advisable to double check when the registration is compulsory, as there are certain activities with third parties that can take place in Spain without making registration compulsory. (p.e.: Distribution of goods from a consignment stock, sales within Spain without further structure to Spanish entrepreneurs/professionals due to the reverse charge rule...).

Another important matter is the need of tax representation.

For VAT purposes, Spanish regulation determines Tax Representation is compulsory in the case of non established Entrepreneurs/professionals when:

A) Develop in Spain taxable activities that make that entrepreneur/professional VAT subject.

But there are exceptions:

- Those who exclusively intervene in exempt transactions related to customs free zones, customs free deposits and other deposits, or to tax or customs suspensive regimes, but if claiming for non resident VAT in Spain (Case in which tax representation is compulsory).
- Those who are established in the EU, Canary islands, Ceuta or Melilla.
- Those who are established in a Country with analog instruments of mutual assistance to the ones we have in the EU (Only Norway).

For Telecom, broadcast, and television services or for electronic services (but for Norway) there is obligation to designate a tax representative in Spain.

Dir 2006/112/CE art.11 allows EU Countries to consider as a single taxable subject those persons/entities with legal independence, but related to each other by links of financial, economical or organizational order. It is what we call Group of entities special regime. This regime allows Groups to submit a single VAT form with the eliminations and additions of the internal transactions or just with the compensation of balances.

This special regime is open to entrepreneurs or professionals belonging to a group, this is a parent Company and its subsidiaries as long as all of them are settled in Spain. Therefore a group with presence outside Spain would not be eligible for applying this special regime.

VAT RATES

Nowadays outstanding VAT rates are:

21% General VAT rate

10% Reduced VAT rate

4% Super-reduced VAT rate

The Law defines the cases in which reduced and super-reduced rates are applicable:

10% VAT rate is applicable for certain goods/ services:

Goods:

- In general, Goods for human consumption
- Water
- Medicine for animal medical purposes
- Certain Chemist products
- Flowers and plants
- Houses and annexes under certain conditions
- Among others

Services:

- Transport of travellers
- Restaurants
- Very concrete cultural events
- Amateur sport events
- Commercial expositions and congresses
- Among others

4% VAT rate is applicable for certain goods/ Services:

Goods:

- Very specific Goods for human consumption (Bread, Milk, eggs, cheese, fruits, vegetables...)
- Books, Newspapers, magazines (even electronic ones)
- Medicine
- Prothesis and Orthesis
- Among others

Services:

- Reparation of vehicles for handicapped people
- Teleassistance services
- Rental with purchase option of protected houses.

PLACE OF SUPPLY RULES

Goods

General rule:

The deliveries of goods which are not object of transport to be put under disposal of the recipient are considered located in the Spanish VAT territory, as long as that is the place the disposal takes place. This disposal is evidenced by the transfer of risks and of skills inherent to property.

Specific rules:

The deliveries of goods which are not object of transport outside the Spanish VAT territory, are located for VAT purposes in that territory when the transport begins in that territory but for distance sales transactions.

There are several specific rules regarding location of deliveries of goods, like in the case of immovable property, goods subject to installation or assembly, deliveries to passengers, among others.

Services

General rule:

The key for allocating services is the recipient.

A) If the recipient is an entrepreneur or professional acting as such, and settled (resident, domiciled, or established) in the Spanish VAT territory, as long as the services are rendered in

favour of that settlement, no matter where the renderer is settled, or the place the services take place, the allocation of services is such territory.

There are specific rules for immovable property services, restaurant and catering services, passenger transport or mean of transport rental, among others there are special rules.

B) If the recipient is not an entrepreneur or professional acting as such, but is a final customer, and the renderer's place from where the service is rendered, or in defect the place where is settled (resident, domiciled, or established) is in the Spanish VAT territory, those services shall be located in that territory.

Specific rules:

There are specific rules for:

- Services related to immovable property
- Transport services
- Certain cultural services, and fairs and congress organizations
- Restaurant and catering services
- Intermediation services
- Mean of transport rental
- Telecom, broadcasting, Television and electronic services

TIME OF SUPPLY RULES

Goods

The accrual of the tax, as a general rule, takes place when goods are put under disposal of the recipient, or when the delivery takes place according to the applicable legislation. If the delivery is formalized in public deeds, the accrual takes place at the moment they are granted, or at the moment the public deeds determine the accrual must take place.

The accrual is important as long as determines VAT is forceable, even when the payment has not been done. As an exception, for those cases of payments in advance (Not for Intra-EU transactions) the accrual takes place at the moment the payment is done, even if no transfer of property and risk have been settled.

Intra-EU transactions of goods accrual takes place on the 15th of the following month to the month goods are being transported, or if before that date the invoice has been issued, the date of issuance.

Import of goods accrual takes place when the customs form has been submitted and accepted, but for certain exceptions (abandon of deposits different to customs free deposits).

Services

The accrual of the tax, as a general rule, takes place when the services are rendered, executed or released.

For those recurrent transactions lasting more than 1 year, which don't generate payments in advance, in which the recipient is VAT subject due to reverse charge rule, the accrual takes place by 31st of december, for the corresponding part of the service from the beginning up to that date.

Intra-EU transactions of goods accrual takes place on the 15th of the following month to the month goods are being transported, or if before that date the invoice has been issued, the date of issuance.

Transports have also specific rules.

EXEMPTIONS

Domestic exemptions classify in five different categories:

- Social and cultural exemptions
 - Medical Assistance
 - Social Assistance
 - Education
 - Sport and Culture
- Financial and insurance exemptions
- Immovable property exemption
- Technical exemptions
- Other exemptions

Social and cultural exemptions

Within this chapter, some examples of exemption are the medical prevention, diagnosis and treatment, hospital services, certain specialist services, ambulance services or good delivery or services rendered by the Social Security System.

Also services of social assistance, services rendered by certain non profit institutions, services rendered by professional schools, Education on compulsory subjects, professional sport training (not sport events), and access to libraries, museums, monuments or events (Theater, music...) as long as they are rendered by public entities or social private entities.

Financial and insurance exemptions

Insurance, reinsurance and capitalization services and also intermediation services would be VAT exempted.

From the financial services point of view, exemption extends to deposit constitution and transfer, credit and loan granting and transfer, or guarantee constitution and transfer, payments, stock transfer, investment funds etc..

Immovable property exemptions

This is probably one of the most transcendent exemptions for those thinking of investing in Real Estate in Spain.

In Spain the second or ulterior transfers of buildings (including the soil), after they have been built/ rehabbed or finished. First delivery is VAT subject, and is the one done by the promoter, unless he or a third party had been using the building for at least 2 years (This third party cannot be the purchaser) as long as in this case it is considered as a second delivery. This is one of the only exemptions which admit renounce (This is for Companies to be able to deduct VAT as long as Real Estate can be object of their activity).

Also rental for living is considered exempt. Joint Garage and annexes would be included in the exemption.

Technical exemptions

The delivery of goods previously used by the transferor to develop exempt transactions, under the condition the acquisition granted no right to deduct VAT, are VAT exempt.

Also the transfer of goods (never services) which acquisition excluded the right to deduct VAT shall be exempted.

Other exemptions

In this category post office services, Lotteries and political parties would be included.

RECOVERY OF INPUT VAT

VAT recovery (Deductibility/ refund) has a subjective and an objective perspective. First of all we must ask Who can recover VAT?

Only professionals or entrepreneurs who purchase goods or hire services in order to develop a usual professional or entrepreneurial activity as long as those goods or services are affected to those activities. Also those VAT subjects who make Intra-EU deliveries of new means of transport.

In cases of fraud the Authorities can refuse the VAT subject to deduct any VAT (Carrousel Fraud).

On the second we may ask What is necessary to be able to deduct VAT?

- It must be Spanish VAT(VAT in other countries must be requested to those Countries)
- The input VAT quotes must have been accrued
- The quotes must have been reflected on the invoice support and coincide in amount (receipts are not sufficient to deduct VAT)
- goods acquired or services hired, must be affected to the activity.

Limitations to the right to deduct VAT

But for exceptions VAT is not deductible in regards to:

- Goods used alternatively or simultaneously in entrepreneurial/ professional activities and at the same time in private needs
- Expenses that don't appear on the accounts or VAT records of the tax payer
- Leisure trips
- Jewels
- Gifts to clients
- Food, Tobacco, drinks, Performances etc..

Support to deduct or recover VAT

- For domestic transactions the invoice
- For EU acquisitions the invoice
- For imports the liquidation of taxes by the tax authorities. In case the Import takes place through a customs agent the document must be certified by the agent.

Foreigners VAT claims

A - Entrepreneurs/ professionals non established in Spanish VAT Territory, but established in the EU, Canary Islands, Ceuta or Melilla, or established in the VAT Territory but without executing delivery of good transactions or service rendering regarding which they are VAT subject from that establishment in the period VAT is claimable :

These Entrepreneurs/ professionals can claim for Spanish input VAT according to the 8th Directive. Also those non established Entrepreneurs/ professionals which develop in Spain only transactions for which the reverse charge rule is applicable (as long as a third party is VAT subject instead), or those rendering exempt transport services, would be liable to claim foreigners VAT, through the Directive guidelines. In case for reverse charge rule applicability they were considered as VAT subjects this mechanism not be applicable.

Those Entrepreneurs/ professionals under special regime of technological services (MOSS) can claim using this mechanism even not accomplishing the previous conditions.

VAT would be claimable as long as the requirements to deduct/ recover VAT that appear in the previous lines are committed.

The application must be submitted through telematic means from the country the Company is established before 30th of September of the year after input VAT was afforded, on an annual basis. It is also possible to claim for this VAT on a quarterly basis. Limits for this claims are 50 Eur minimum for annual forms and 400 Eur minimum for quarterly forms.

B.- Entrepreneurs/ professionals non established in Spanish VAT Territory, nor established in the EU, Canary Islands, Ceuta or Melilla

For claiming third countries VAT a tax representative in Spain would be compulsory.

Not all Countries can claim for Spanish VAT. Only those Countries with reciprocity agreement with Spain:

Canada, Japan, Monaco, Switzerland, Israel o Norway.

From the 1st of September 2015 any Country can claim for VAT regarding the following goods and services:

- The supply of jigs, molds acquired or imported in the territory of application of the tax by the non established entrepreneur or professional for making it available to a businessman or professional established in that territory, for use in the manufacture of goods dispatched or transported outside the Community in favour of that non established entrepreneur or professional, as long as at the end of the manufacture of the goods, these are dispatched destined for this non resident entrepreneur or professional , or destroyed ;
- Access services , hotel, restaurant and transport linked to attendance at fairs, conferences and exhibitions for commercial or professional activities taking place in the territory of application of the tax.

The application of the refund must be submitted by the tax representative in Spain and is based in the 13th Directive regulation.

COMPLIANCE OBLIGATIONS

Invoices

To support VAT correct invoices must be issued/ received. This is such an important chapter that we shall extend on it:

Invoice content according to Spanish domestic Regulation

In Spain there are two different kinds of invoice:

- Complete Invoice
- Simplified Invoice

Simplified invoice can be issued to support the following transactions:

- Those under €400 (VAT Incl.)
- Those under €3.000 (VAT Incl.) in case of retail sales and delivery of products to be consumed immediately.

Invoices can be issued by third parties that act under the name and on behalf of the Company. For this, there are specific requirements:

- There must be a previous agreement between the Company and the third party according to which the first party authorizes the second one to issue invoices in its name and behalf.
- Both parties must agree a procedure according to which the Company shall accept each invoice issued by the third party in its name and on its behalf, and shall receive a copy of the issued invoices. (Accepted procedures are emails of confirmation or digital signature procedures)-
- Invoices would always contain all VAT identification information of the Company and never of the third party.
- Invoices must be issued with a specific series.

We must remark at this point the VAT subject of the transaction is always responsible for the fulfillment of all documentation liabilities of the transaction. The invoice must always guarantee authenticity, integrity of content and readability.

Minimum content of invoices and simplified invoices:

A) Complete Invoices:

- Number and Series: Numbering must always be correlative, and the series can be different as long as there is a reason to justify it. If a third party is issuing invoices under the name of the Company, these invoices must have a specific series from other airlines that could do the same. Also the tax authorities consider there would be a reason for a specific series in case the nature of the transaction was different (p.e.: sales of goods and catering services).
- Date the invoice was issued
- Date the transaction took place.
- Name, surname and full address of the Company that delivers the goods and also of the recipient
- Id. Number for tax purposes of the Company delivering the goods
- Id. Number for tax purposes of the recipient in case the recipient is entrepreneur or professional (Reverse charge rule)
- Description in detail of the transaction. (Including price per unit and discounts in case there were any).
- Taxable base
- Tax rate
- Tax quote

B) Simplified Invoices:

It is the equivalent to what we used to call tickets. These are the compulsory pieces of information they must show.

- Number and Series: Numbering must always be correlative, and the series can be different as long as there is a reason to justify it. If a third party is issuing invoices under the name of the Company, these invoices must have a specific series from other airlines that could do the same. Also the tax authorities consider there would be a reason for a specific series in case the nature of the transaction was different (p.e.: sales of goods and catering services).
- Date the invoice was issued
- Date the transaction took place.

- Name, surname and full address of the Company that delivers the goods.
- Id. Number for tax purposes of the Company delivering the goods
- Description of the transaction.
- Tax rate (and the expression VAT Included)
- Total price (VAT Included)

It would be convenient to show also the name on top : Simplified invoice (Factura simplificada).

Credit notes are no longer admitted, therefore now we must go through correcting invoices from complete or simplified invoices:

C) Correcting Invoices:

- These substitutes to the old credit notes must accomplish with the minimum content of the kind of invoice they correct but furthermore they must accomplish with the following guidelines:
- The title of the invoice must be clear (CORRECTING INVOICE)
- These must be issued in a series apart for correcting invoices.
- There must be an explicit reference to the reason of the correction (p.e. Wrong tax rate use/ Wrong address or identification of recipient ...).
- In case the price or the tax suffered corrections these must be shown on the invoice

Example I:

Original price: 1.200 Eur

Corrected price: 1.000 Eur

Original VAT (21%) : 252 Eur

Corrected VAT (21%): 210 Eur

Original Price: 1.452Eur

Corrected Price: 1.210 Eur

Example II: Price: -200

VAT (21%) : -42

Corrected price: -242

Compulsory VAT Books

Those Companies with VAT liabilities in Spain must carry:

- Book of issued invoices
- Book of received invoices
- Book of investment goods
- Book of Intra EU transactions

These books are very important for tax audits, as the more accurate and correct the more success in the tax audit.

Tax forms

VAT tax form submission general obligation is based on a quarterly form. However when in the previous year the turnover exceeded 6M Euros, then the obligation is based on a monthly form. Also there is a monthly form for those entrepreneurs/ professionals with usual VAT credit who claim VAT also on a monthly basis.

VAT tax form in Spain is form 303.

For foreign VAT claims forms are 360/ 361.

Surcharges and Penalties.

Surcharges are applicable for delays, and up to 12 months surcharges run from 1% to 20% without interests. From 12 months interested shall be charged.

In case the Authorities requested a non submitted form before voluntary submission, or in case there was any infraction committed penalties can vary from 50% to even more than 150% of the economical damage (unpaid amount).

SPECIAL CASES

In Spain, there are special regimes for VAT which use different rules to the general ones exposed in previous paragraphs.

This is the case of:

- 1.- Special regime of used items, art pieces, antiques, and collections
 - 2.- Special regime of Agricultura, livestock, or fishery
 - 3.- Special Regime for Travel Agents
 - 4.- Special Regime for technological services
 - 5.- Special Regime of Cash Criteria (Accrual criteria would not be applicable but invoice collection criteria)
 - 6.- Special Regime for Group of Companies
 - 7.- Special Simplified regime for certain entrepreneurs
 - 8.- Special Regime for distance sales
 - 9.- Special regime of new means of transport sales
 - 10.- Special Regime for investment gold
- etc...

RIGHTS OF THE TAX PAYER AND THE VAT AUTHORITIES

The main rights of any VAT subject or tax payer before a tax audit/check are:

- Right to be informed and assisted by the Tax Authorities about the exercise of rights and commitment of tax liabilities/ Obligations
- Right to be reimbursed for the cost of guarantees provided
- Right to use the outstanding official language of each territory
- Right to know the estate of any process the tax subject/payer is involved in
- Right to know the identity of the Authority and personnel working for the Tax Authorities under which responsibility the process is managed
- Right to get a certified copy of the documents provided to the Authorities
- Right not to provide the Tax Authorities with those documents that had been previously provided

- Right of confidentiality of the information, reports, or background obtained by the Tax Authorities
- Right to be treated with respect and consideration by civil servants
- Right to request the process takes place in the least burdening way for the audited
- Right to be heard in the audience stage of a process
- Right to be informed of the beginning of the tax audits, or tax checks, as well as of the rights and obligations
- Right to submit complains and suggestions related to the way the Tax Authorities work
- Right to leave a record of the comments of the tax payer/ subjects deffending his/her rights, through a diligence document as part of the process
- Right to obtain copy of all the documents composing the file of the process
- Right to have access to files or administrative registers
- Right to act through representative before the Tax Authorities
- Right to request the Authorities unilateraly declare expiration of the right of the Authorities to audit a certain year.
- Right of Inviolability of the domicile
- Right to request the audit/check makes itself extensive to other non expired years or taxes.

Civil servants on their side have ther right to be supported and protected by the public authorities.

The prerrogatives can vary a lot depending on the review process. Therefore, for example tax technitians on a tax check cannot request the accounts, while a tax inspector in a tax audit can.

EUROPEAN TRANSACTIONS

For VAT purposes, in Spain Statistic obligation (Intrastat) is compulsory if any of the transactional flows, this is delivery of goods flow, or reception of goods flow from another EU Country exceed 400.000 Eur.

But in addition to the VAT form, Tax obliged persons must also submit a 349 form on a quarterly or monthly basis declaring all transactions with other Countries within the EU, including not only good transfers as in Intrastat, but also services located in destination.