

W T S L a m a r q u e



K r i e g

T A X A D V I S E R S

SUMMARY OF THE MOST RELEVANT VAT CHANGES FOR 2009 IN SPAIN

Madrid, January 2009

WTS LAMARQUE & KRIEG TAX ADVISERS, S.L.P
CIF B-84075647

Inscrita en el Registro Mercantil de Madrid al Tomo 20339, Libro 0, Folio 130, Sección 8, Hoja M 359651, Inscripción 1;
Gutierre de Cetina 19, 1-E, 28017 Madrid
Tel. (0034) 91 406 29 26 / (0034) 657 080 172 / Fax (0034) 91 377 58 27
taxadvisers@lamarque-krieg.com / www.lamarque-krieg.com

1. Introduction

The past December, new rules regarding VAT entered into effect in Spain:

- 1) Law 4/2008, 23 December, which eliminates Wealth Tax and which introduces the regime of monthly VAT refund and other modifications.
- 2) Royal Decree 2126/2008, 26 December, which modifies VAT regulations.

2. New rules

2.1. Regime of monthly VAT refund:

As per January 1st, 2009, entrepreneurs will be able to ask for the monthly VAT/IGIC¹ refund if the following requirements are met:

- a) Application for the regime of monthly VAT refund

It has to be filed an application in order to be included in the register of entrepreneurs that are entitled to the monthly request of VAT refund.

Deadline for filing the application:

As a general rule, the request for registration must be filed in November of the year immediately preceding the year in which the regime of monthly VAT refund shall be effective.

However, entrepreneurs that have not applied for such regime in the month of November of the preceding year will be equally entitled to apply for it within the deadline foreseen for filing each periodical VAT return. In such a case, the regime for monthly VAT refund will be effective in principle as per the day the mentioned

¹ Impuesto General Indirecto Canario (Canary VAT)

deadline finishes. However, the application of this regime requires the expressly acceptance of the Tax Authorities. Should the Tax Authorities not answer expressly within a period of 3 months, the request must be considered refused.

In addition, with regard to 2009, the application for the monthly VAT refund regime can be filed until January 30th 2009.

Once the taxpayers have opted for the application for the regime of the monthly VAT refund, such regime must be applied at least during the whole year for which it was accepted by the Tax Authorities.

The request of deregistration must also be filed during the month of November of the year immediately preceding such year in which the general VAT refund regime shall again be effective.

- b) Entrepreneurs shall not incur in any cause that would imply their deregistration according to articles 144.4, 146.b), c) and d) of the tax compliance and audit regulation.
- c) Entrepreneurs must be up to date with their tax obligations as foreseen in article 74 of the tax compliance and audit regulation
- d) Entrepreneurs applying the special simplified regime are not entitled to ask for this refund regime.
- e) In case of VAT consolidated groups, it is necessary that all the entities of the group opt for the application of this regime and fulfil the mentioned requirements.

Following disadvantages of this regime must be highlighted:

- a) The norm does only foresee the possibility to ask for the monthly refund. After filing the request of refund the Tax Authorities have 6 months in order to decide with this regard. Thus possibly the refunds are not going to be done monthly.

- b) Entrepreneurs that apply this regime must file their periodical tax return monthly independently of their turnover. Following the general refund regime tax payers with a turnover lower than ca. 6 Mio € file their returns on a quarterly basis.
- c) Entrepreneurs that have opted for the application of this regime must file their VAT registers (register of incoming invoices, register of outgoing invoices, register of intracommunity operations and register of investments made in assets used during more than one year) monthly and per Internet before the Tax Authorities. In addition, as per January 1st 2010, all legal entities will be obliged to accomplish with this informative obligation, regardless of the application for the regime of monthly VAT refund.
- d) The Tax Authorities might ask for bank guarantees before ordering the refund.

2.3. New definition of Entrepreneur:

Following EU Jurisprudence, the Spanish VAT Law has been modified in the sense that legal entities will not be considered automatically entrepreneurs any more. This new consideration refers specially to holding companies.

2.4. Non taxable transactions:

The transfer of an ongoing business is not subject to VAT independently of the tax regime applied with regard to other taxes.

According to the previous wording of the VAT Law only transfers of ongoing business undertaken under the special corporate tax deferral regime (special regime for mergers, splits, and assets contributions) were non taxable.

In addition, in such cases, it is not necessary that the transferee continues with the exercise of the same activity of the transferor. He must only have the intention to carry out a business activity.

However, the law foresees certain exceptions with regard to entities or professionals that are considered taxable subjects of VAT due to their specific inclusion as such in the law but in fact do not have an entrepreneurial structure.

2.5. Reduction of the period for the modification of taxable amount:

Article 80 of the Spanish VAT Law establishes the possibility to reduce the taxable base in cases of bad debts if certain requirements are met. One of such requirements was that more than 2 years had elapsed since the accrual of the VAT without the invoice having been settled. This period has been reduced to one year.

2.6. Deductibility of the import VAT:

The import VAT is deductible once the import VAT has been assessed by the Tax Authorities or, in case of assimilated imports, self-assessed by the taxpayers, regardless of the effective payment of the import VAT. In our opinion and following the criterion of the Tax Authorities expressed in the ruling dated March 13th, 2008 the import VAT will be deductible once the customs documents have been filed before the relevant authorities and the tax assessment has been issued.

2.7. New details to be included in the VAT registers

The VAT number of the client and of the provider must be included respectively in the register of outgoing and of incoming invoices.

Furthermore also the date of the corresponding operation must be shown in such registers in addition to the invoice date.