

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

“VAT PACKAGE” IN SPAIN

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1. Introduction

As surely known, the EU Directives 2008/8 (services Directive) 2008/9 (VAT refund Directive) and 2008/117 (intracommunity transactions Directive), together called commonly “VAT Package” should have been transposed by the Member States into domestic rules as per January 1st, 2010.

The Spanish legislator has not complied with this deadline and thus the Tax Authorities have issued on December 23rd, 2009 (published in December 29th, 2009) a Resolution including its interpretation of the mentioned Directives, which are directly applicable in Spain according to the Jurisprudence of the EU-Court.

The purpose of this note are the new rules regarding services and the obligation to include them in the up to the present called EU sales and acquisition return.

2. New rules regarding services

2.1. General rules in relation to the place of supply of services.

a) Services rendered to entrepreneurs

According to the new Resolution, the place of supply of services to entrepreneurs shall be the place where that entrepreneur has established his business. However, if those services are provided to a permanent establishment of the entrepreneur located in a place other than where he has established his business, the place of supply of those services shall be the place where the permanent establishment is located. In the absence of such permanent establishment, the place of supply of services shall be the place where the entrepreneur who receives such services usually resides.

Consequently, according to the above, the general rule as per January 1st, 2010 regarding the place of supply of most of the services rendered to entrepreneurs is that such services are considered located at destination (reverse charge rule).

b) Services rendered to individuals

The place of supply of services to an individual shall be the place where the supplier has established his business. However, if those services are provided from a permanent establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that permanent establishment is located. In the absence of such permanent establishment, the place of supply of services shall be the place where the supplier usually resides.

Therefore, the services rendered by Spanish entrepreneurs to individuals are subjected to Spanish VAT, regardless of the residence place of the Individual.

Nevertheless, the place of supply of several services to individuals who have their permanent establishment or usually reside outside the E. U. shall be the place where that individual is established. Thus, such services will not be subjected to Spanish VAT.

These services are the following:

- Transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- Advertising services.
- The services of consultants, engineers, consultancy firms, lawyers, accountants, and other similar services.
- The services of data processing and the provision of information.
- The services of translation, correction and composition of texts.
- Banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes.
- The dubbing films.
- The supply of staff.
- The hiring out of movable tangible property, with the exception of all means of transport.

- The provision of access to, and of transport or transmission through natural gas and electricity distribution systems and the provision of others services directly linked thereto;
- Telecommunications services.
- Radio and Television broadcasting services.
- Electronically supplied services.

Please note that such rule will not be applicable to the services mentioned above which are rendered to individuals who are resident in Canary Islands, Ceuta and Melilla. Thus, those services will be subjected to Spanish VAT.

2.2 Special rules in relation to the place of supply of services

a) Supply of services connected with real estate property.

The place of supply of services connected with real estate property shall be the place where the real estate property is located.

b) Supply of transport

It is necessary to distinguish different types of transport

- Passengers’ transportation

The place of supply of passengers’ transportation shall be the place where the transport takes place, proportionate to distances covered.

- Transport of goods

Intra community transport of goods

The place of supply of the intra-Community transport of goods to entrepreneurs shall be the place where the entrepreneur is established.

The place of supply of the intra-Community transport of goods to Individuals shall be the place of departure.

Transport of goods other than the intra Community transport of goods

The place of supply of the intra-Community transport of goods, other than the intra-community transport of goods to Entrepreneurs shall be the place where the entrepreneur is established.

The place of supply of the transport of goods, other than the intra-Community transport of goods, to individuals shall be the place where the transport takes place, proportionate to the distances covered.

c) Supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services.

The place of supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services, shall be the place where they are physically carried out.

Nevertheless, as per January 1st 2011, the place of supply of such services which are rendered to entrepreneurs will be the place in which the entrepreneur is established.

d) Supply of electronic services.

For the place of supply of electronic services, general rules will be applicable.

Nevertheless, when such services are rendered by entrepreneurs who are established outside the Community to Individuals who are established in a Member State, or who have their permanent address or usually reside in a Member State, the services will be subjected to Spanish VAT.

e) Supply of restaurant and catering services

The place of supply of restaurant and catering services shall be the place where the services are physically carried out.

In addition, please be aware that the place of supply of restaurant and catering services that are physically carried out on board ships, aircraft or trains during the section of a passengers’ transportation carried out within the Community will be subjected to the Spanish VAT as far as the starting place of the transportation is situated in Spanish territory.

f) Supply of services by intermediaries

In order to determine the place of supply of services rendered to entrepreneurs by intermediaries, general rules will be applied.

In addition, the place of supply of services rendered to Individuals by an intermediary acting in the name and on behalf of another person shall be the place where the underlying transaction is supplied.

g) Supply of services connected with movable goods

The place of supply of services connected with movable goods and rendered to entrepreneurs shall be the place where the entrepreneur is established.

The place of supply of such services rendered to individuals shall be the place where those services are carried out.

h) Supply of transport hiring out services

For the place of supply of transport hiring out services on long term, general rules will be applied.

The place of supply of transport hiring out services on short term (generally 30 days) shall be the place where such means are put at the disposal of the recipient of the hiring services.

3. The “clause of effective use” rule

Regarding the place of supply of services it is important to take into consideration finally the “clause of effective use”, which has remained unchanged. According to this rule, electronically rendered services electronically, professional services, and certain services of intermediaries rendered to entrepreneurs that are resident in third countries are subject to Spanish VAT as far as such services are effectively used in Spain and they cannot be considered located in the E.U., Ceuta, the Canary Islands, or Melilla following the proceeding rules.

The same happens with regard to telecommunication, and radio and television broadcasting services rendered to recipients resident in third countries independently of their condition of entrepreneurs or individuals.

4. E.U. sales, acquisitions and services return

As per January 1st, 2010 also intracommunity services have to be included in the up to that date called “E.U. sales and acquisition return”. Thus, as per the mentioned date not only intracommunity deliveries or acquisition must be declared in such return, but also the rendering or receipt of intracommunity services, identifying as the case may be the provider or the recipient of the services as well as the corresponding taxable basis.

Intracommunity services are defined as follows:

- Services that according to the described rules are not located in Spain but in another E.U. Member State.

- Services where the recipient is an entrepreneur acting as such in the mentioned Member State or having there a permanent establishment or residing there usually.
- Services in which the recipient is the taxable subject (reverse charge rule).

The three listed conditions must be met together.

As far as during the respective quarter or during each of the preceding 4 calendar quarters of the year the intracommunity deliveries and rendering of services exceed the total amount of 100.000,- €, such return has to be filed monthly. Otherwise the return must only be filed quarterly, as it was the rule up to January 1st, 2010.