Value-Added Tax
Summary

- Introduction
- Supplies of goods and services – Domestic transactions
- Importation and intra-Community acquisitions
- Tax deduction
- Administration
Introduction
Overview (1/2)

- VAT as a consequence of being part of the EU (Law 30/1985)
- Regulation: Law 37/1992 (implementation of the VAT Directives)

- **Indirect** tax on general consumption within business traffic
  - From a legal perspective: to charge VAT
  - From an economic perspective: “indirect” ability to pay
1. **Real and objective tax**: this tax does not consider the person or the personal circumstances of the taxpayer to calculate the tax debt.

2. **Proportional tax**: fixed tax rate on a variable tax base (different tax rate for different goods and services).

3. **Instantaneous tax**: an accrual date for every supply of goods and services (regular tax returns and assessments).

4. **Tax assigned to regions belonging to the common system**: collection of 50% on the consumption taking place in each territory (no regulatory capacity).

5. **General tax**: a tax on general consumption which coexists with certain taxes on the consumption of specific goods, e.g. tobacco

6. **Multistage tax** (impuesto plurifásico): the tax is levied on the different stages of the productive process ➔ the tax is levied in respect of the “value added” in every stage
VAT scheme: I

- Who should pay the tax debt? The person who supplies goods and services (consumer)
  - Businesspeople and professionals ("organisation")
  - The possibility to charge the VAT → consumer
VAT scheme: II

- When the transaction is not conducted in a single place
- Several Tax Administrations are involved
- Supplies of goods through international transportation
- Provisions of services are *always taxed* as domestic transactions

CUSTOMS!
- Exporting country (State A): to check the supply ("departure") of the good in order to grant a **tax exemption**
- Importing country (State B): to check the supply ("arrival") of the good in order to **impose the tax**
VAT scheme: III

- At the EU level, Customs...
- (Final) solution: compensatory system (transfers) which allows the VAT collection in respect of consumptions of goods and services made in its territory
VAT scheme: IV

(Provisional) solution: the tax is levied in the Member State of destination

Intra-Community acquisitions

Goods: intra-Community transportation

Acquirer: businessperson or professional

Supplier

Price (without VAT)

Member State A (origin)

Member State B (destination)

VAT

Elizabeth Gil García
**VAT scheme: V**

- How to make the acquirer (businessperson of Member State B) pay the tax?
  - **INFORMATION!**
    1. Duty of the businessperson/professional who acquires the good: payment of VAT
    2. Duties between the transferor and the Tax Administration (intra-Community transaction)
    3. Cooperation between Tax Administrations

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**Supplier**

<table>
<thead>
<tr>
<th>Good</th>
<th>Acquirer</th>
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<tbody>
<tr>
<td>Price (without VAT)</td>
<td></td>
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**Member State A (origin)**

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<tr>
<th>VAT</th>
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**Member State B (destination)**
Scope of application

Schemes:
1. DOMESTIC TRANSACTIONS;
2. IMPORTS/EXPORTS; &,
3. INTRA-COMMUNITY ACQUISITIONS

Art. 3 of the VAT Law: “Territorialidad”

Spanish territory: Ceuta, Melilla and Canary Islands* are excluded
   ➢ Consequence? Transactions are regarded as imports/exports

*The Canary Islands levy a type of value-added tax known as IGIC (Impuesto General Indirecto Canario) on taxable supplies of goods and services by individual or corporate businesspeople within the Canary Islands and on the importation of goods to the Canary Islands.
VAT and other indirect taxes

INDIRECT TAXATION

1. Excise duties (*Impuestos Especiales, IIEE*)
2. Customs duty (*Derechos aduaneros*)
3. Insurance premium tax (*Impuesto sobre las Primas de Seguro*)

4. Tax on Transfers of Property and Official Documents (ITPAJD)
   - *Capital duty (OS)*
   - *Stamp duty on officially documented acts (AJD)*
   - *Transfer tax (TPO)*

**TPO**: a tax levied on consumption between individuals (*tráfico privado*)
**VAT**: a tax levied on consumption within business traffic

However, transactions explicitly or implicitly related to immovable property:

*Doble sujeción operación, pero no doble gravamen ➔ the transaction is subject to TPO* provided that a VAT exemption is granted
Domestic transactions
Article 4 of the VAT Law:
«Estarán sujetas al impuesto las entregas de bienes y prestaciones de servicios realizadas en el ámbito espacial del impuesto por empresarios o profesionales a título oneroso, con carácter habitual u ocasional, en el desarrollo de su actividad empresarial o profesional, incluso si se efectúan en favor de los propios socios, asociados, miembros o partícipes de las entidades que las realicen»

- **Type of activity:** business or professional activity
- **Type of person:** businesspeople or professionals
- **Specific facts that constitute the taxable event:** supplies of goods and services
Type of activity: business or professional activity

Art. 5 of the VAT Law: «Son actividades empresariales o profesionales las que impliquen la ordenación por cuenta propia de factores de producción materiales y humanos o de uno de ellos, con la finalidad de intervenir en la producción o distribución de bienes o servicios»

Type of person: businesspeople or professionals (art. 5 of the VAT Law)

a) Las sociedades mercantiles (salvo prueba en contrario).

b) Explotación de un bien con ánimo de obtener ingresos continuados en el tiempo, y en particular la condición de arrendador.

c) Urbanización de terrenos o la promoción, construcción o rehabilitación de edificaciones destinadas, en todos los casos, a su venta, adjudicación o cesión por cualquier título, aunque sea ocasionalmente.

d) Entrega a título ocasional de medios de transporte nuevos.
Tax event
*Supplies of goods and services*

- **Specific facts that constitute the taxable event:** *supplies of goods and services*

  - **Supply of goods (art. 8 of the VAT Law):** transfer of the power to alienate tangible goods.
    - Gas, heat, cooling and similar utilities are considered goods

  - **Provision of services (art. 11 of the VAT Law):** any transaction for consideration, which is not a supply of goods, and, in particular, the independent exercise of a profession, letting of goods or businesses and the transfer of industrial or intellectual property (IP).

- **Non-exhaustive list:** arts. 8 – 12 of the VAT Law
Tax event
Supplies of goods and services

Transfer of goods between the contracting party (comitente) and the commission agent (comisionista) when the latter acts on his or her own behalf under a sales contract (art. 8 Two 6th of the VAT Law).
Art. 9 of the VAT Law «Operaciones asimiladas a las entregas de bienes»

- **Self-supply** of goods:
  - If goods formerly used in the business are used for *other purposes* and for that reason *leave the business*, the transfer of goods from the business to the private domain is regarded as a supply of goods.

- The **transfer** of a (tangible) business asset to another Member State for it **to be attached to the business in that territory** is regarded as a supply of goods.
Art. 7 of the VAT Law refers to transactions that do not constitute a taxable event

1. Supplies of money as remuneration or compensation
2. The work provided by individuals under legislation on dependent care, regardless of whether there is a labour or administrative relationship.
3. The free supply of demonstration services or samples without commercial value to promote a business or professional activity.
4. The transfer of a going concern, provided the purchaser continues with a business activity (regardless of whether this is the same business or a new one)
5. Self-supplies that can generate over-taxation.
6. Services supplied by employees to their employers.
7. Supplies of goods and services by Public Administrations with no remuneration or in cases of tax remuneration (contraprestación de naturaleza tributaria).
Exemptions

The effective tax of domestic transactions will depend on the existence of tax exemptions. They are classified as follows:

- **Full exemption**: deduction is granted for input VAT (*IVA soportado*). Thus, the Tax Administration receives no VAT debt for consumption.
  - Exports and intra-Community supplies as the consumption takes place abroad (tax levied in the destination territory)
- **Limited exemptions**: no deduction is granted for input VAT. Thus, the Tax Administration receives certain amounts; in particular, the “value added” in the last stage is excluded from taxation.
  - Social and cultural exemptions, e.g. medical and dental services; veterinary services; educational services.
  - Financial exemptions, e.g. financial services; sale of shares and other securities.
  - **Exemption for immovable property**
  - **Exención técnica**: supplies of goods where no (input) tax deduction was allowed on acquisition
Exemption for immovable property ➞ leasing and supply of certain buildings

- **Leasing:** art. 20. 23rd of the VAT Law:
  
  a) Rental of dwellings.
  
  b) Rental of land and buildings used for agricultural purposes.
Exemption for immovable property

Supply of immovable property: art. 20, 20th and 22nd of the VAT Law:

- Sale of rural land not suitable for development, including buildings used for agricultural purposes or exclusively used for public parks and gardens or public use roads (*superficies viales de uso público*).
- Second and successive sales of buildings.
Exemption for immovable property

Supply of a building plot

Property developer

Supply of a building

Acquirer

Second sale of building = VAT exemption ➔ TPO

Possibility to reject the tax exemption

When the acquirer can deduct all or part of the tax borne (input VAT)

VAT

Why? Reason?

VAT

VAT?
Supply of goods by businesspeople or professionals when no tax deduction was allowed on acquisition. That is, they could not deduct the input VAT as the good was used in an exempt transaction (e.g. medical services). In other words, they were treated as a final consumer. Therefore, the *exención técnica* applies when they transfer such good to prevent over-taxation. For VAT purposes, such good has already been consumed.
Tax levied on the general consumption of goods and services. The person who supplies goods and services should pay the tax debt: **businesspeople and professionals**. However, the consumer is the person whose ability to pay (“consumption of goods”) is subject to tax.

**Taxpayer = realisation of the tax event = supply of goods/services**

The businessperson charges the VAT to the consumer through the invoice or similar document: price (tax base) + (output) VAT
Place of taxation

- Determination of the legislation which should apply to the transaction
- Arts. 68 to 70 of the VAT Law

A transaction is effected at its place of supply. In the case of supplies of goods:

- General rule? Goods are generally deemed to be supplied in Spain if the goods are located in Spain when sold.
  - For immovable property, the place where it is located.

- Special rules?
  - If goods are transported, the place where the transportation begins is deemed to be the place of supply.
  - Supplies with installation and assembly in the territory.
  - Supply of a good on board ships, aircraft or trains with departure and arrival in the EU.
Place of taxation

The place of taxation in the case of provision of services:

- General rule? Art. 69 of the VAT Law:
  - In the case of the provision of services to businesspeople whose headquarters, PE or registered office is located in the territory where Spanish VAT applies.
  - In the case of the provision of services to individuals when the service is provided by businesspeople whose headquarters, PE or registered office is located in the territory where Spanish VAT applies.

<table>
<thead>
<tr>
<th>SERVICE RECIPIENT</th>
<th>PLACE OF TAXATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Businessperson/professional</td>
<td>Place where the service recipient is based</td>
</tr>
<tr>
<td>Individual*</td>
<td>Place where the service provider is based</td>
</tr>
</tbody>
</table>
Place of taxation

- The place of taxation in the case of *provision of services*:
  - Special rules? Art. 70 of the VAT Law
    a) Services related to immovable property are supplied where the property is located.
    b) Artistic, scientific and entertainment services are supplied where they are actually performed.
    c) Restaurant and catering services supplied on board ships, aircraft or trains during the section of a passenger transport operation effected within the EU are subject to Spanish VAT if the transport begins in the territory where Spanish VAT applies.
      • In the case of a return trip, it is regarded as a separate transport operation for the purpose of applying this rule.
VAT accrual date? When goods are effectively acquired or the service is provided (art. 75 of the VAT Law).

- Special rule:
  - When the commission agent acts on his or her own behalf, there are two (separate) supplies of goods
  - The accrual of the transaction between the contracting party and the commission agent (who is merely an intermediary) is determined by reference to the transaction between the commission agent and the purchaser.
Time of taxation

- Special rule:

  In transactions subject to taxation which generate advance payments taking place before the taxable event, the VAT liability arises at the time the price is charged. That is, the advance payment anticipates the VAT accrual. However, this does not happen in the opposite situation (e.g. postponed payment).
Tax base

General rule (and special rules)

- General rule:
  - The tax base is determined by the gross consideration received by the person supplying the goods or services (art 78 of the VAT Law). In particular:
    - Commissions, insurance and transportation costs.
    - Subsidies.
    - Taxes.
    - Container and packaging costs.

  e.g. compensations do not form part of it

- Special rules? (art. 79 of the VAT Law)
  - Benefits in kind.
  - Self-supplies.
  - Related-party transactions.
  - Supplies of goods between contracting party and commission agent when the latter acts on his or her own behalf.
Proportional tax rate that applies to the tax base. There are three rates for different types of goods and services:

- The **standard** rate of 21% (art. 90 of the VAT Law) applies to all goods and services not subject to the reduced rates.
- The **reduced** rate of 10% (art. 91 of the VAT Law), e.g. food (except basic food which is taxed at a rate of 4%) and non-alcoholic beverages (alcoholic beverages are taxed at a rate of 21%); live animals; water; hotel and restaurant services; certain medical equipment and pharmaceutical products; etc.
- The **super-reduced** rate of 4% (art. 91 of the VAT Law), e.g. basic food such as bread, flour, milk, cheese, eggs, fruit, vegetables; books, newspapers and magazines; pharmaceutical products and medicines; etc.
Intra-Community acquisitions
Exemptions – *triangulation cases*

*Intra-Community acquisitions*

- **Triangulation** is where the same goods are supplied twice and three parties are involved.
- **Conditions (art. 26 of the VAT Law):**
  - The transaction is conducted by a businessperson who is not based in the territory where Spanish VAT applies and being identified in another Member State of the EU.
  - The transaction is effected for a subsequent supply of the acquired goods by the acquirer. The (subsequent) supply takes place within the territory where Spanish VAT applies.
  - Acquired goods are directly transported through a Member State other than the State where the acquirer is identified for VAT purposes and whose recipient is the person to whom the goods are subsequently supplied.
Exemptions – triangulation cases
Intra-Community acquisitions

So...

The intermediary acquires the good from the supplier in order to supply it to the (final) acquirer.

Goods are transported from the country of origin to the country of destination by order of the intermediary.

Each businessperson or professional is identified for VAT purposes in different Member States.
Exemptions – *triangulation cases*

*Intra-Community acquisitions*

- **Therefore,**

  - The businessperson-supplier (Member State A) supplies goods to the businessperson-intermediary (Member State C) → intra-Community supply of goods **exempt** in Member State A

  - The businessperson-intermediary receives the goods in Spain → intra-Community acquisition **subject to tax but exempt** in Spain: *triangular transaction (operación triangular)*

  - The businessperson-intermediary supplies the goods to the businessperson-acquirer (Member State B: Spain) → domestic transaction **subject to tax and non-exempt**
Taxable persons
Intra-Community acquisitions

Businesspeople or professionals

Article 85 of the VAT Law: taxable persons.
“En las adquisiciones intracomunitarias de bienes los sujetos pasivos del impuesto serán quienes las realicen, de conformidad con lo previsto en el artículo 71 Ley IVA”
Place of taxation
Intra-Community acquisitions

Art. 71 of the VAT Law
Place of taxation?

- Intra-Community acquisitions of goods are treated as taking place in the territory where Spanish VAT applies if the **place of arrival of the transport** is located within Spain.
Accrual?

- When goods are effectively acquired
- **Advance payments do not anticipate the VAT accrual**
Imports
Imports

- **Importation?** Tax levied on the supplies of goods whose destination is the territory where Spanish VAT applies, the goods having been brought from outside the EU.
  - Taxation is facilitated because of **customs**: control and tax collection (together with other taxes such as excise duties and customs duty)
- **Taxable persons?** Any person identified as the recipient of the goods regardless of that person’s status – no special status is required (art. 86 of the VAT Law)
- **Place of taxation?** The place where goods are introduced, that is, taxation is due at the destination
- **Time of taxation?** When accrual of import duties occurs according to customs legislation (art. 77 of the VAT Law).
  - In general terms, when customs services admit the declaration of declaration od release (**declaración de despacho**)
- **Tax base?** Customs value (= remuneration) + other taxes (with the exception of VAT) and ancillary costs (art. 83 of the VAT Law).
- **Tax rate?** Arts. 90 and 91 of the VAT Law
Tax deduction
Arts. 92-114 of the VAT Law

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The VAT is levied at every stage of the productive process (“value-added”). With this purpose and to prevent the businessperson (who is the intermediary in the supply of goods and services) from taxation (as the businessperson’s ability to pay is not subject to tax), an **INPUT TAX DEDUCTION** is granted.

**Requirements?**

1. Status of businessperson or professional.
2. Tax borne in the territory where Spanish VAT applies.
3. The taxable person must issue purchase invoices
   - Original invoice: domestic transactions and intra-Community acquisitions
   - Documentation of the tax payment in the case of imports.
4. The goods and services purchased must be necessary and used to carry out the business or professional activity
5. Acquisition of goods in transactions allowing the right to apply the tax deduction (**be aware of limited exemptions!**)
Administration
Administration

(1) Obligation to submit **tax returns-assessments** (quarterly)

(2) Duties of **information**
   - *Annual summary tax return (form 390)*
   - *Recapitulatory return of intra-Community transactions (form 349)*

(3) Non-EU businesspeople/professionals who are VAT taxpayers (or who apply for a VAT refund) are under an obligation to **appoint** a natural or legal person domiciled in the territory to **represent** them in relation to their VAT obligations. Businesspeople/professionals located in the Canary Islands, Ceuta, Melilla or a State with administrative cooperation are excluded from this obligation (art. 164 of the VAT Law).

(4) Invoices and records
   - (* from July 2017: **Immediate Supply of Information on VAT (SII)**
     - Taxpayers subject to the *SII* (and those choosing to adopt it voluntarily) must send details of their billing records within four days **via online** filing on the Tax Administration website
     - Taxpayers will be able to file and pay their periodical VAT self-assessments ten days later than usual, and they will no longer be required to file the traditional forms (i.e. annual VAT summary or third-party transactions, *inter alia*).