



# Value Added Tax developments in the Draft 2023 General State Budget Law

Tax Alert



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# Value Added Tax developments in the Draft 2023 General State Budget Law

**The Draft 2023 Budget Law provides for a range of Value Added Tax measures, the most noteworthy of which being the amendment of the use & enjoyment rule on the place of supply of certain services and the relaxing of the requirements for VAT recovery in bad debt scenarios**

8 October 2022 saw the publication in the Official Gazette of the Spanish Parliament of the 2023 Draft General State Budget Law (the “Draft 2023 GSB Law” or the “Draft Law”), which includes a number of tax-related measures, the majority of which are set to enter into force on 1 January 2023.

In terms of Value Added Tax (“VAT”), the Draft 2023 GSB Law brings with it several changes, the most important of which are those concerning the use & enjoyment rule on the place of supply of certain services and the relaxing of the requirements for VAT recovery in bad debt scenarios.

We analyse below the most relevant VAT-related amendments. Please note that these amendments may well be subject to further changes during the Draft Law’s passage through parliament in the coming months.

## Amendment of the use & enjoyment rule (article 70.Two of the VAT Law):

The Draft 2023 GSB Law amends article 70.Two of the VAT Law, which regulates the so-called **use & enjoyment rule**, on the place of supply of certain services.

The planned amendment lays down different rules depending on whether the services in question are rendered to VAT entrepreneurs and professionals or to private individuals. Specifically:

- B2B services: The Draft GSB Law does away with the possibility of applying this rule to services across the board. Nonetheless, it may still be applied to services for the hiring out of means of transport and those referred to in article 69.Two.g) of the VAT Law. Namely, *“the insurance, reinsurance and capitalisation services, and the financial services, referred to, respectively, in sections 16 and 18 of article 20.One of this Law, including those that are not exempt, with the exception of the hire of safe-deposit boxes.”*
- B2C services:
  - The use & enjoyment rule will continue to apply to services for the hiring out of means of transport.

- It will no longer apply to electronically-supplied services, telecommunications, radio or television broadcasting services.
- In a new development, the rule will also be applicable to the wide range of services included under article 69.Two of the VAT Law, which the preamble to the Draft Law appears to refer to as “supplies of intangible services”. These services include, inter alia, advisory services and the above-mentioned insurance and financial services.

## Amendment of the taxable amount in respect of bad debts classed as wholly or partially uncollectible (article 80 of the VAT Law):

Certain aspects of the rules and procedure for the recovery of VAT on bad debts are amended to better align the Spanish VAT Law with European legislation and case law in this regard:

- The minimum taxable amount of affected transactions is reduced from Euros 300 to Euros 50, where the defaulting recipient is the end consumer.
- The requirement to have claimed payment from the debtor via a court claim or notarial demand is relaxed to permit the use of **any other methods that allow for reliable evidence of the fact that the debt has been claimed from the debtor**.
- The period available for recovering VAT after the debt in question is declared uncollectible is extended from three to six months. This measure is accompanied by a transitional regime to enable all taxable persons for VAT to take advantage of the new six-month period, where the relevant deadline has not already elapsed at the date of entry into force of the Law.
- As regards **insolvency claims**, the taxable amount may now be amended even where the recipient of the transactions (the debtor) is not established in Spanish VAT territory, the Canary Islands or Ceuta or Melilla, provided the bad debt in question is subject to insolvency proceedings commenced by a court of another member state that is subject to Regulation

(EU) 2015/848 of the European Parliament and the Council, of 20 May 2015, on insolvency proceedings.

### Reverse charge mechanism (article 84 of the VAT Law):

The scenarios in which the reverse charge mechanism for VAT applies are amended. Specifically:

- It will now apply to supplies of plastic and fabric waste and scrap.
- It will not apply to supplies of services involving the lease of property subject to and not exempt from VAT, or to property lease intermediation services, where such services are supplied by persons or entities not established in Spanish VAT territory.
- Moreover, two scenarios in which goods are supplied by VAT entrepreneurs or professionals not established in Spanish VAT territory are excluded from the scope of application of this mechanism: On the one hand, services supplied to VAT entrepreneurs or professionals who facilitate a supply via a digital interface and, on the other, exports of goods performed by an exporter other than the non-established transferor or transferee.

### Other amendments:

- Certain other changes are introduced with a view to adapting the Spanish VAT Law to Community legislation as regards the value added taxation of electronic commerce: (i) rules are established as regards place of supply in intra-EU distance sales of goods; (ii) the quantitative limit applicable to intra-EU distance sales of goods under article 68.Three.a) and b) and the supplies of services under article 70.One.4 and 8 is amended. Specifically, the Draft 2023 GSB Law incorporates the following paragraph into article 73 of the VAT Law:

*“The limit provided for in the first paragraph of this section shall not apply where intra-EU distance sales of goods are performed, in whole or in part, from a member state other than the member state of establishment”.*

This means that the Euros 10,000 limit that permits taxation at source will only apply where the goods are sent to the end customer from the member state of establishment.

- The limits for application of the simplified regime (Euros 150,000) and the special regime for agriculture, farming and fishing (Euros 250,000) are

extended for the 2023 tax period and a new deadline is established for the waiver or revocation of the above VAT regimes.

- Certain technical adjustments are also made to adapt the Spanish VAT Law to Community customs legislation.
- Effective as of 1 July 2022 and valid indefinitely, intra-EU supplies and acquisitions of goods and services and imports of goods and their application by the armed forces, for their own use or for use by the civil personnel at their service, or for supplying their messes or canteens are declared exempt. The above modification is the result of the transposition of Council Directive (EU) 2019/2235 of 16 December 2019 amending Directive 2006/112/EC on the common system of Value Added Tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence efforts within the Union framework.
- Effective as of the entry into force of this Law and valid indefinitely, the **tax rate** for feminine hygiene products, condoms and other non-medicinal contraceptives is reduced to 4%.
- Finally, the Draft 2023 General State Budget Law introduces several changes to the Canary Islands General Indirect Tax with a view to aligning it with the amendments to VAT.

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