Measures to optimise VAT control on hydrocarbons leaving bonded warehouses

Tax Alert

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21 December 2024 saw the publication in the Official State Gazette of Law 7/2024 of 20 December 2024, the final provisions of which introduce measures to combat the VAT fraud currently existing in respect of hydrocarbons leaving tax warehouses. Certain amendments and specifications have also been made to Royal Decree-Law 9/2024.

In addition to the top-up tax, Law 7/2024 and RD-Law 9/2024 now provide for other tax measures, including the amendment of Value Added Tax Law 37/1992 of 28 December 1992 (the "VAT Law"), affecting **petrol, diesel and other fuel leaving tax warehouses.**

These measures are aimed at tackling the "missing trader" fraud affecting the market for diesel, petrol and biofuels intended for use as motor vehicle fuel. Companies are created to remove these hydrocarbons from a tax warehouse (since these products have been placed under a warehousing arrangement other than customs warehousing for Value Added Tax (VAT) purposes, they are acquired exempt from VAT) and subsequently resell them to another/other distributor(s) or to petrol stations, with VAT charged on the sale but not paid to the tax authorities. The companies or persons behind the sale then disappear before the tax agency can detect the fraud.

The following amendments have been included with a view to combating fraud in the motor fuel distribution sector:

Transactions treated as imports

In the case of petrol, diesel and biofuels intended for use as motor fuel falling under headings 1.1, 1.2.1, 1.2.2, 1.3, 1.4, 1.13 and 1.14 listed under rate 1 of article 50.1 of Excise Duty Law 38/1992 of 28 December 1992, the warehousing arrangement other than customs warehousing will in any case be deemed discharged **by the last depositor of the product that is removed from the tax warehouse**, on whom the relevant hydrocarbon tax will be charged and who will be required to pay VAT on the transaction treated as an import (form 380), **or by the owner of the tax warehouse** in the event that such owner also owns the product.

Guaranteed VAT payment

As a result of this measure, the final depositor of the product to be removed, or the owner of the tax warehouse if they also own the product, will be required to guarantee the payment of VAT on the subsequent taxable and non-exempt supply of the product once it has been removed from the tax warehouse.

Such assurance may take the form of a credit institution guarantee or payment on account of VAT, some aspects of which are to be implemented by Ministerial Order, with a transitional period of one month from publication of the Order. However, this guarantee obligation shall cease to have effect where the final depositor (or, as the case may be, the owner of the tax warehouse):

- Has recognised authorised economic operator (AEO) status; or
- Has recognised trusted operator status.

Authorisation to remove products from a tax warehouse

The procedure for authorising the removal of products from a tax warehouse will involve an express decision by the competent tax authorities, whereby they agree to or deny the removal of the products from the tax warehouse.

Joint and several liability of the tax warehouse

Owners of tax warehouses who allow fuel to leave their premises without prior clearance shall be liable, on a joint and several basis, for payment of the tax debt relating to the supply subject to and not exempt from VAT after departure.

Monthly VAT period

Owners of tax warehouses for petrol, diesel or biofuels subject to the tax on hydrocarbons, and entrepreneurs or professionals who remove such products from tax warehouses, shall make VAT settlements on a monthly basis, as is customary.

Other measures adopted to combat VAT fraud on fuels

Law 7/2024 has introduced an amendment to Excise Duty Law 38/1992 of 28 December 1992, referring to the possession of hydrocarbons for distribution purposes, or for the refuelling of vehicles used to transport goods or passengers.

More specifically, it provides that the invoice or equivalent document reflecting the charging of the tax or the relevant accompanying document will not suffice to demonstrate payment of the tax on hydrocarbons in any of the following cases:

- Where the presence of products other than duly authorised markers or tracers, or components permitted in the technical specifications, is detected in such hydrocarbons.
- Where the products have been acquired from operators not included in the list published by the National Energy Commission pursuant to the provisions of article 42.2 of Hydrocarbons Industry Law 34/1998 of 7 October 1998.

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KPMG Abogados' specialist Excise Duties team is on hand to help entities analyse these measures and how they might affect them, and to minimise any impact deriving therefrom.

Contacts

Juan José Blanco Martín
Partner
KPMG Abogados
Tel.: 91 456 34 61
jblanco@kpmg.es

Antonio Fernández de Bujan y Arranz
Director
KPMG Abogados
Tel.: 91 456 34 00
afernandezdebujan@kpmg.es

KPMG offices in Spain

A Coruña
Calle de la Fama, 1
15001 A Coruña
Tel.: 981 21 82 41
Fax: 981 20 02 03

Alicante
Muelle de Levante, 8
Planta Alta
03001 Alicante
T: 965 92 07 22
Fax: 965 22 75 00

Barcelona
Torre Realia
Plaça de Europa, 41
08908 L'Hospitalet de Llobregat
Barcelona
Tel.: 932 53 29 00
Fax: 932 80 49 16

Bilbao
Torre Iberdrola
Plaza Euskadi, 5
48009 Bilbao
Tel.: 944 79 73 00
Fax: 944 15 29 67

Girona
Edifici Sèquia
Sèquia, 11
17001 Girona
Tel.: 972 22 01 20
Fax: 972 22 22 45

Las Palmas de Gran Canaria
C/Bravo Murillo, 22
35003 Las Palmas de Gran Canaria
Tel.: 928 32 32 38
Fax: 928 32 45 55

Madrid
Torre de Cristal
Paseo de la Castellana, 259 C
28046 Madrid
Tel.: 91 456 34 00
Fax: 91 456 59 39

Malaga
Marqués de Larios, 3
29005 Málaga
Tel.: 952 61 14 60
Fax: 952 30 53 42

Oviedo
Ventura Rodríguez, 2
33004 Oviedo
Tel.: 985 27 69 28
Fax: 985 27 49 54

Palma de Mallorca
Edificio Reina Constanza
Calle de Porto Pi, 8
07015 Palma de Mallorca
Tel.: 971 72 16 01
Fax: 971 72 58 09

Pamplona
Edificio Iruña Park
Arcadio M. Larraona, 1
31008 Pamplona
Tel.: 948 17 14 08
Fax: 948 17 35 31

San Sebastián
Avenida de la Libertad, 17-19
20004 San Sebastián
Tel.: 943 42 22 50
Fax: 943 42 42 62

Seville
Avda. de la Palmera, 28
41012 Sevilla
Tel.: 954 93 46 46
Fax: 954 64 70 78

Valencia
Edificio Mapfre
Paseo de la Almeda, 35, planta 2
46023 Valencia
Tel.: 963 53 40 92
Fax: 963 51 27 29

Vigo
Arenal, 18
36201 Vigo
Tel.: 986 22 85 05
Fax: 986 43 85 65

Zaragoza
Centro Empresarial de Aragón
Avda. Gómez Laguna, 25
50009 Zaragoza
Tel.: 976 45 81 33
Fax: 976 75 48 96