

INFORMATION - Spain

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In Spain, telecommunications, broadcasting and electronic services provided, both to taxable persons and non-VAT taxable persons, if otherwise taxable outside of the EU are subject to Spanish VAT if these services are used and enjoyed within Spanish territory.

Reference to the above may be found in Article 70.2 of the Spanish VAT Law and Doctrine from the General Tax Directorate.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

In Spain, depending on the type of telecommunication, broadcasting and electronic services to be provided (both to taxable persons and non-VAT taxable persons), the VAT accrual may differ. In principle, these transactions become taxable according to the normal rules provided for under Directive 2006/112/EC. Nonetheless, if such transaction may be deemed as on-going/a continuous supply of services, the VAT accrual would take place at the time the price becomes due or annually for longer periods.

If there is an advance payment the supply will be deemed to take place when that payment is collected by the supplier.

Effective on 1st January 2014, the cash accounting scheme was implemented in Spain. However, currently the cash account scheme is not applicable for non-EU established entities who applied for the One Stop Shop.

Reference to the above may be found in Article 75.1.2º, 75.1 7º, Article 75.2 and Article 163.12th.2a)

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In Spain, VAT on continuous supplies of services becomes chargeable when the consideration for the service becomes chargeable but, in any case, no later than on 31 December of the year during which the supply has started.

Reference to the above may be found in Article 75.1 7º of the Spanish VAT Law.

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

In Spain, the consideration for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons may be deemed to be the open market value where the parties to the transaction are connected parties. This specific rule will only be applicable when any of the connected parties does not have the right to fully deduct VAT.

The connection between those parties can be evidenced by any means accepted by Law.

Reference to the above may be found in Article 79.5 of the Spanish VAT Law.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

Bad debt relief is available in Spain, subject to the following requirements (among other formal and timing requirements):

One year (smaller entities may opt to wait only 6 months) has elapsed since the moment when VAT became chargeable;

The unpaid invoice is registered in the provider's VAT records;

The customer must be a taxable person or the taxable basis of the transaction higher than EUR 300.

The provider must have initiated a payment request by means of a judicial claim or through a Public Notary request (if the debtor is a Public Body, a specific certificate must be obtained in which the pending debt is outlined).

As of January 2014, the recipient should communicate the amendment procedure to the Tax Authorities by an specific form enabled in the Authorities' website.

Reference to the above may be found in Article 80.4 of the Spanish VAT Law and 24.2 of the VAT Regulation. Article 80.3 of the Spanish VAT Law also outlines the possibility to recover VAT bad debts when the debtor is declared in bankruptcy. In this case, some specific formal and timing requirements must be complied with (other than the ones set forth in Article 80.4).

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In Spain, paper books may be subject to a super reduced rate of 4% insofar as they are incorporated into any tangible element (including CDs, pen drives, among others, if they can be deemed as ancillary to the book). On the contrary, downloading an e-book directly into the customer's computer will be subject to 21%. For any other services the standard rate of 21% should apply.

Reference to the above may be found in Article 91.2, 1.2º of the Spanish VAT Law and Doctrine from the General Tax Directorate.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

In Spain the standard VAT rate is 21%.

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

Spain has not implemented rules under its domestic legislation whereby taxable persons are released from the payment of the VAT where the amount due is insignificant.

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

In Spain, a taxable person is required to issue an invoice with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons. If the amount to be billed is not higher than 400 euros (VAT included), the taxable person might issue a simplified invoice.

Reference to the above may be found in Article 164.1 3º of the Spanish VAT Law and articles 2 and 4 of the Spanish Invoicing regulation Royal Decree 1619/2012 (Hereinafter Invoicing Regulation).

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

Invoices should be issued in accordance with Directive 2006/112/EC.

Invoices can be issued in any language, but the invoice may have to be translated into Spanish upon request from the VAT authorities.

Reference to the above may be found in Articles 6 and 12.2 of the Invoicing regulation.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

In Spain, an invoice must be issued at the time VAT becomes chargeable when the recipient is a non-taxable person. Otherwise, it may be issued when the VAT becomes chargeable or by the day 16th of the month following the VAT accrual.

Reference to the above may be found in Article 11 of the Invoicing regulation.

Invoicing Obligations - Summary Invoices - VAT Directive 2006/112/EC - Articles 217-249

In Spain, summary invoices for telecommunications, broadcasting and electronic services provided to the same non-VAT taxable persons must be issued, at the latest, on the last day of the calendar month during which the relevant transactions took place.

Reference to the above may be found in Article 13.1 of the Invoicing regulation.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Electronic invoices are available in Spain in accordance with the rules laid down in Directive 2006/112/EC.

Reference to the above may be found in Article 8, 9 and 10 of the Invoicing regulation.

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Batches of electronic invoices are available in Spain in accordance with the rules laid down in Directive 2006/112/EC.

Reference to the above may be found in Article 10.2 of the Invoicing regulation.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

Spain has not implemented any rules or anti-avoidance measures that may directly impact telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

No provisions are applicable under a Stand-still Scheme in the Spanish VAT legislation or subject to common practice in the Spain that may be relevant for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

VAT Treatment of vouchers

There are no specific rules in Spain regarding the VAT treatment of vouchers, each transaction has to be analysed on a case by case basis.

The Spanish Tax Authorities make a distinction following the CJEU case "BUPA", taking into account whether the underlying transaction to which the voucher relates is defined at the time the voucher is sold. Although there are no clear distinction in the Spanish VAT law, the following reasoning usually applies:

For single purpose vouchers, VAT becomes chargeable upon the sale of the voucher, given that the service against which the voucher will be redeemed is already known.

For multi-purpose vouchers, the sale of the voucher is not subject to VAT, given that the service against which it will be redeemed is unknown at the time of sale. VAT becomes due upon redemption, the issuer being liable for VAT on the face value of the voucher.

Reference to the above may be found in in Article 70.1 8º of the Spanish VAT Law and Doctrine issued by the General Tax Directorate.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (E-learning activities)

In Spain, education services are VAT exempt if the following requirements are met:

- The service is supplied by a Public Entity or an authorised Private entity; and
- The education is in relation to any of the subjects included in any of the Study Plans of the Spanish Education System.

Education services provided via electronic means will therefore be exempt in Spain if the above mentioned requirements are met. On the contrary, e-learning, insofar as it is considered as electronic services according to the definition contained in point (5) of Annex I of Council Implementing Regulation (EU) No 282/2011, will be taxed at 21%.

Reference to the above may be found in Article 20 of the Spanish VAT Law and Doctrine issued by the General Tax Directorate.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

In Spain, lotteries, betting and gambling activities are VAT exempt if:

- organized by Public National lottery operators;
- organized by Public bodies of the Spanish Autonomous Community and;
- organized by Authorized Gambling operators the gambling activities of which are subject to Spanish Gambling Tax, which includes authorized operators that organizes gambling activities, raffles, betting, occasional gambling, cross-border gambling, random combinations games for marketing or promotional purposes.

In principle, e-gambling activities are subject to Spanish Gambling Tax in Spain therefore should be VAT exempt in Spain. However it is advised that the exact VAT treatment is analysed on a case by case basis.

There is no clear guidance in the Spanish legislation regarding the VAT Treatment of Bonus Points/Credits granted as part of e-Gambling Activities and such treatment should be analysed on a case by case basis.

Reference to the above may be found in Article 20 of the Spanish VAT Law and Spanish Gambling Regulations (Law 13/2011).

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

There are no further VAT exemptions applicable under the Spanish VAT legislation that would apply to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

VAT Registration Process

Registration under the MOSS in Spain may take place by submitting a 034 Form via the following link:

https://www.agenciatributaria.gob.es/AEAT.sede/en_gb/procedimientoini/G329.shtml

Access to web-portal and contact details of the local VAT authorities

The Spanish Tax Authorities has recently launched a web portal for the MOSS.

Relevant information can be found in this web portal, such as registration form and instructions.

General information may be found following the link below (in English):

http://www.agenciatributaria.es/AEAT.internet/en_gb/Inicio/La_Agencia_Tributaria/Campanas/One_Stop_Shop/One_Stop_Shop.shtml

General Contact:

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Appointment of a VAT Agent

In Spain, there has not been any specific guidance so far regarding the possibility to appoint an agent with respect to supplies made under the MOSS. According to practice, the appointment of a fiscal representative is mandatory for non-EU companies who wish to register for VAT in Spain.

For EU companies, appointing a VAT representative in Spain is in principle not obligatory but usually recommended.

Penalties for non-compliance (Failure to register and late registration)

For late registration a penalty of EUR 400 will be imposed. It can be reduced to EUR 200 if the filing has been done prior to a requirement from the Spanish Tax Authorities.

Reference to the above may be found in Article 198 of the Spanish General Tax Law.

Penalties for non-compliance (Non-payment and late payment of VAT)

For non-payment, a penalty of 50% to 150% of the VAT amount due will be imposed. For late payment, a surcharge of 5% to 20% plus late interest can be imposed.

Reference to the above may be found in Article 191 and Article 27 of the Spanish General Tax Law.

Penalties for non-compliance (Non-submission and late submission of VAT returns)

The penalty for late filing is EUR 200 in case of a request from the VAT authorities when there is no financial impact. In case of a late filing of a VAT return without request from the Tax Authorities, the penalty would be reduced to EUR 100.

Reference to the above may be found in Article 198 of the Spanish General Tax Law.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

Generally, the penalty for incorrect filing of a VAT return is EUR 150.

Reference to the above may be found in Article 199 of the Spanish General Tax Law.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

Incorrect invoices are subject to a penalty of 1% of the total amount of all invoices wrongly issued. Failure to issue invoices results in a penalty of 2% of the total amount of invoices not issued.

Reference to the above may be found in Article 201 of the Spanish General Tax Law.

As a general rule, failure to record or the incorrect record of a transaction in a VAT Ledger is subject to a penalty of EUR 150. In case the data recorded is incorrect, a penalty of 1% of the amount wrongly stated will be charged, with a minimum of EUR 150 and a maximum of EUR 6,000.

Reference to the above may be found in Article 200 of the Spanish General Tax Law.