

Application of VAT in 'derivatives'

Fiscal Update (<https://periscopiofiscalylegal.pwc.es/categorias/actualidad-fiscal/>), Indirect taxes (<https://periscopiofiscalylegal.pwc.es/categorias/actualidad-fiscal/impuestos-indirectos/>), Financial sector (<https://periscopiofiscalylegal.pwc.es/categorias/sectores/sector-financiero/>) - February 14, 2020



[_ \(https://v1.addthis.com/live/redirect?url=mailto%3A%3Fbody%3Dhttps%253A%252F%252Fperiscopiofiscalylegal.pwc.es%252Faplicacion-del-iva-en-derivados%252F%2523.XkeN_wNGWSI.mailto%26subject%3DAplicaci%25C3%25B3n%2520del%2520IVA%2520en%2520%25E2%2580%2598derivado544e45c77a56f8bd&rev=v8.28.3-wp&per=undefined&pco=tbx32-300\)](https://v1.addthis.com/live/redirect?url=mailto%3A%3Fbody%3Dhttps%253A%252F%252Fperiscopiofiscalylegal.pwc.es%252Faplicacion-del-iva-en-derivados%252F%2523.XkeN_wNGWSI.mailto%26subject%3DAplicaci%25C3%25B3n%2520del%2520IVA%2520en%2520%25E2%2580%2598derivado544e45c77a56f8bd&rev=v8.28.3-wp&per=undefined&pco=tbx32-300)

The realization of operations with derivatives on underlying assets, financial or non-financial (eg commodities) can be a significant complexity in the **application of VAT**. In particular, the implications that they may have on the right to deduction, impact on the calculation of the deduction pro rata and determination of the volume of operations for the purposes of VAT, as well as the obligations that, in view of the Regulation of Billing could be derived from daily or due payments of these products.

The **'derivatives'** They are contracts generated from others of a simpler nature, purchase and sale operations that generate rights or obligations on assets (financial or non-financial) that have been previously issued or negotiated or that do not yet exist, being, therefore, instruments that derive from an underlying asset, hence its denomination. As a common note, they generally incorporate deferred performance commitments whose conditions are set forth herein. Its value is based on the price of its underlying asset (for example, the value of a derivative on gold will depend on the price of gold). The underlying assets used can be very different, with the most common actions, stock indexes, fixed income securities, interest rates, currencies, raw materials, energy products, etc.

The basic instruments of derivatives markets are futures, options, forwards (term) and swaps (swaps). The first two are traded in organized markets, while the latter are traded in unorganized markets (denominated in the technical jargon OTC markets, over the counter).

Operations with derivatives are often directly identified as financial operations and, as such, it seems that they should be considered exempt from VAT, without further discussion. But this approach is too simple, under the denomination of derivatives there are very diverse operations and, in addition, we must specify that VAT rules do not declare exempt all operations that meet a financial purpose, but only some of them. Recall that, according to repeated **jurisprudence of the CJEU**, the exemptions, as exceptions to the general rule of subjection, must be interpreted strictly and that the financial operations exempt from VAT are those expressly and in detail collected as such in the Directive and Law of the VAT

We can accept that derivatives on financial underlying assets (securities, currencies, loans, deposits, etc.), in accordance with the provisions of the VAT Law, will be services subject to and exempt from VAT. However, other issues such as their computation for the purposes of the volume of operations and integration in the deduction pro rata will, on the contrary, certainly prove complex.

As for derivatives with other underlying, remember that according to the **Annex to the VAT Law**, specifically in its Fifth number, b), second paragraph, goods that are traded in official futures and options markets are understood in DDA based on non-financial assets, as long as the aforementioned assets are not made available to the acquirer.

This precept, often
official markets be
VAT exemption.

This website uses third-party cookies in order to offer a better service. If you continue browsing we consider that you accept its use. For more information you can consult the notice [information about cookies \(/informacion-sobre-cookies/\)](#)

I accept

derivatives traded in
iated with full

Regarding the tax base of these operations, the **TEAC**, after warning of the VAT subject of these business operations in any case, warns that they should be included in the calculation of the deduction pro rata, as part of its denominator, only when they result in positive final differences, not the negative ones, considering each contract or “product”.

If that conclusion is correct, it must be added that the final balance of an operation does not determine whether the operation exists or who performs the taxable event. The entrepreneur or professional who performs an operation does so regardless of their balance and of course it cannot be accepted that there are two taxpayers in a single taxable event. Thus, in our opinion, it would occur in futures and options where one agrees to deliver and another to acquire, without the second, regardless of the balance of the operation, its profit or loss, making any taxable event of VAT. The collection or payment made by the recipient of the operation is irrelevant for VAT purposes, as it would be for any other delivery or service operation. There is therefore an operation regardless of your final balance,

On the other hand, in swaps, as in any exchange, we could understand that there are two taxable events and two taxable persons, with cross-payments, without their “netting” being relevant. However, the extension of this figure in the market, despite the insufficiency of its regulatory development and recognition, should tip the balance because it is a unique service provision, which would only exist as an active operation for those who put the instrument in circulation in the market, which offers the other party its contracting assuming the risk of price fluctuation, not necessarily in the sense determined by its balance, being irrelevant to the other party.

This discussion and problem, with very little regulatory support, becomes more evident when we refer to the obligation to bill the operations by those who perform them. The correct answer is not simple, of course, our regulations have generally ignored these operations and the market has had to evolve with practical solutions.

On the other hand, as with billing, it is also considered whether, for example, each of the amounts originated in the daily settlements of accrued differences during the entire term of future contracts, should or should not be taken into account in the calculation of the volume of operations regulated in article 121 of the VAT Law.

Pending a ruling from the Supreme Court regarding derivatives on financial underlying, we will see how we can conclude on these difficult issues.

Tags: [Derivatives](https://periscopiofiscalylegal.pwc.es/temas/derivados/) (https://periscopiofiscalylegal.pwc.es/temas/derivados/), [VAT](https://periscopiofiscalylegal.pwc.es/temas/iva/) (https://periscopiofiscalylegal.pwc.es/temas/iva/), [Billing Regulation](https://periscopiofiscalylegal.pwc.es/temas/reglamento-de-facturacion/) (https://periscopiofiscalylegal.pwc.es/temas/reglamento-de-facturacion/), [TEAC](https://periscopiofiscalylegal.pwc.es/temas/teac/) (https://periscopiofiscalylegal.pwc.es/temas/teac/)



Download PDF alert

VAT application on 'derivatives' (https://periscopiofiscalylegal.pwc.es/wp-content/uploads/2020/02/Periscopio_PwC_Aplicacion_IVA_Derivados_02_20.pdf)

Call us and we help you:



Alberto Monreal (https://periscopiofiscalylegal.pwc.es/autor/alberto-monreal/)

Partner responsible for Tax Procedures and Indirect Taxes

+34 915 684 226



(https://www.linkedin.com/in/alberto-monreal-lasheras/) Write me (http://www.pwc.es/es/quienes-somos/periscopio-legal-fiscal.html)



Francisco Cremades (https://periscopiofiscalylegal.pwc.es/autor/francisco-cremades/)

Indirect Tax Expert

915 684 306



(https://www.linkedin.com/in/francisco-cremades-6197a926/?originalSubdomain=es) Write me (mailto:francisco.cremades.leguina@pwc.com)

Subscribe to Legal and Fiscal Periscope

Activate Subscription (/suscribete)

© 2020 Fiscal and Legal Periscope.

This website uses third-party cookies in order to offer a better service. If you continue browsing we consider that you accept its use. For more

information you can consult the notice [information about cookies](#) (/informacion-sobre-cookies/)

I accept