

**SECRETARIAT OF STATE OF FINANCE DIRECTORATE  
GENERAL OF TAXES  
Binding Queries**

**NUM-INQUIRY** V1456-20

**ORGAN** Consumption Tax SG

**DEPARTURE DATE** 05/18/2020

**NORMATIVE** **Law 37/1992 arts. Four. Five; Royal Decree- law 15/2020 art.8**

**DESCRIPTION-FACTS** The consultant is a City Council that is going to make acquisitions of goods necessary to combat the effects of COVID-19.

**QUESTION-RAISED** If the zero rate of Value Added Tax provided for in article 8 of the Royal Decree would apply to such deliveries **law 15/2020** as the recipient is a Public Administration.

**ANSWER- COMPLETE** 1.- **Article 4, section one of the Law 37/1992 , of December 28, of the Value Added Tax (BOE of December 29), establishes that "the deliveries of goods and services made in the spatial field of the Tax by businessmen or professionals onerous title, with habitual or occasional, in the development of their business or professional activity, even if they are carried out in favor of the partners, associates, members or participants of the entities that carry them out. "Section two, letters a) and b), of the same precept indicates that "they will be understood as being carried out in the development of a business or professional activity:**

a) Deliveries of goods and services rendered by commercial companies, when they have the status of entrepreneur or professional.

b) Transmissions or assignments of use to third parties of all or part of any of the assets or rights that make up the business or professional assets of taxpayers, including those made on the occasion of cessation of the economic activities that determine the subjection to the Tax. " On the other hand, in **accordance with the provisions of article 5.one of the aforementioned Law 37/1992 , Entrepreneurs or professionals will be considered for the purposes of Value Added Tax:**

"A) The persons or entities that carry out the business or professional activities defined in the following section of this article."

However, they will not be considered entrepreneurs or professionals who exclusively make deliveries of goods or services free of charge, without prejudice to the provisions of the following letter.

b) Commercial companies, unless proven otherwise.

c) Those who make one or more deliveries of goods or services that involve the exploitation of a bodily or intangible asset in order to obtain continuous income over time. In particular, the lessors of goods will have such consideration. (...). "

In this sense, section two of this article 5 establishes that "it is business or professional activities that imply the self-management of material and human factors of production or of one of them, in order to intervene in production or distribution of goods or services. In particular, extractive activities, manufacturing, commerce and service provision, including those of handicrafts, agriculture, forestry, livestock, fishing, construction, mining and the exercise of liberal and artistic professions, have this consideration. "

These precepts are of general application and, therefore, the suppliers of the goods and services to the consulting City Council, consequently, will have the status of entrepreneur or professional for the purposes of Value Added Tax when they order a set of personal and material means, with independence and under his responsibility, to develop a business or professional activity, be it manufacturing, trade, service provision, etc., through the continuous realization of deliveries of goods or service provision, assuming the risk and happiness that may occur in the development of the activity, provided that they were carried out for consideration.

In that case, the deliveries of goods and services that they carry out in the business or professional activity carried out in the territory of application of the Tax will be subject to Value Added Tax.

2.- In relation to the type of Tax applicable to deliveries of goods necessary to combat COVID-19 in operations in which the recipient is a public entity, **Article 8 of the Royal Decree- law 15/2020, of April 21, of complementary urgent measures to support the economy and employment (BOE of April 22), provides as follows:**

"With effect from the entry into force of this royal decree- law and valid until July 31, 2020, the rate of 0 percent of the Value Added Tax will be applied to the delivery of goods, imports and intra-community acquisitions of goods referred to in the Annex to this royal decree- law whose recipients are entities of Public Law, clinics or hospital centers, or private entities of a social nature referred to in section three of article 20 of the Law 37/1992 , of December 28, the Value Added Tax. These operations will be documented on the invoice as exempt operations. " In relation to the recipients of said 0 percent rate and their possible application to recipients who are entities of Public Law, it should be noted that the Law 37/1992 involves the transposition into national law of the provisions of Council Directive 2006/112 / EC of 28 November on the common system of value added tax

The reference to public law entities is contained, among others, in articles 13 and 132 of the Directive. Article 13, which regulates the regime of submission of public entities, in its Spanish version, establishes: "The States, regions, provinces, municipalities and other bodies governed by public law ...".

On the other hand, in its article 132, in relation to the exemptions of certain activities of general interest carried out by public entities, such as health care, the aforementioned Directive in its Spanish version establishes the exemption in "the provision of hospitalization services and health care and others directly related to them carried out by public law entities. " In this sense, it should be borne in mind that, although the languages of the Member States are official languages of the European Union, the English language, due to its widespread use as a second language in many Member States, is the one used for community debate on the text of the harmonized directive. So,

For these purposes, it should be borne in mind that the English version of Directive 2006/112 / EC establishes in its article 13 that "States, regional and local government authorities and other bodies governed by public law...". In reference to the application of the health exemption of article 132 of the same Directive, in the English language version it states that "hospital and medical care and closely related activities undertaken by bodies governed by public law ...".

Therefore, the translation of the Directive into Spanish when referring to "bodies governed by public law" has sometimes been carried out with the term "bodies of Public Law" and others as "entities of Public Law". In any case, whatever the expression, the term includes, as has been pointed out, the States, the regions (it must be understood as referring to the Autonomous Communities), the provinces, municipalities, and any other body or entity of Public Law.

**3.- For its part, the Law 37/1992 In the scope of the exemptions applicable to certain activities carried out by public entities with a broad sense, it uses the expression of entities of Public Law (health, sports, cultural exemption of a social nature), which must be understood, as indicated, applicable to the territorial Administrations and any other entity integrated or dependent on them. In the same sense, although article 7.8º the Law 37/1992 difference for the purposes of subjecting public sector activity to Value Added Tax between Public Administrations and entities, agencies and entities of the public sector, it should be understood that all of them are included in the term Public Law entities, in accordance with the Harmonized Directive.**

Consequently, within the concept of Public Law entities for the purposes of the possible application of the 0 percent rate of Value Added Tax, referred to in Article 8 of the Royal Decree- law

15/2020, includes, among others, Territorial Public Administrations such as the City Council consultant.

**4.- What I communicate to you with binding effects, in accordance with the provisions of section 1 of article 89 of the Law 58/2003, of December 17, General Tax.**