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VAT and leases of premises at the time of COVID-19

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Indirect taxation, especially in international operations, can be highly sophisticated.

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Despite the fact that neutrality is at the very essence of VAT, and therefore, the Tax should not have an impact for its taxpayers, practice tells us that this is not always the case.

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The situation created by the Covid-19 has had and still continues to have a significant impact on the leasing sector of commercial premises and offices that for a few months were forced to be closed as a result of restrictions on the movement of people by the roads and spaces for public use established in Royal Decree 463/2020, of March 14, declaring the state of alarm. **This temporary closure has led tenants in many cases to find ways to defer payment of lease payments. In other cases, the lessor and lessee have reached agreements to reduce the prices of the installments, leading to, in some cases, debt cancellations. Most probably, in the most extreme cases, situations of definitive non-payment of the rental income will be reached .**

All these possible situations have a significant impact in the field of VAT. This is so because the VAT in **the leasing contracts, as well as in other operations that are considered as successive tracts (provision of services that occur constantly and uninterrupted in time), takes place at the moment in which the part of the price that includes each perception . In other words, the VAT accrues at the moment in which the lessor, in accordance with the agreement, can require the lessee to pay the fee, regardless of whether said payment has occurred or not..** Therefore, in cases in which a deferment of quota payments is agreed, it is very likely that there will also be a delay in the accrual of VAT, and the lessor may delay its declaration and entry to the Public Treasury. However, it is important to consider how and when the parties reach such agreements. If they occur after the VAT has been accrued in accordance with the aforementioned (the enforceability of the quota) it could be the circumstance that the lessor must make a VAT payment in favor of the Administration without having invoiced it to the lessee , creating a clearly negative situation.

We consider that **the scenarios that can most commonly** occur with respect to the leases of premises and offices and their impact on VAT, in the context of the Covid-19 crisis, are the following:

(i) Debt moratorium: As we have previously indicated, leases are successive operations, which means that the accrual of the VAT associated with them occurs with the enforceability of the rent. **When the**

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It is important to mention that **if the agreement reached by the parties occurs after the payment of any of the installments is due, the VAT would have already accrued and the lessee must enter it to the Administration, despite not having invoiced or collected it from your client .**

For example, let us say that the rental of a premises must be paid between the 1st and 5th of each month. If the parties agree to a moratorium before the 5th of said month, the VAT will not accrue until the payment of the rent corresponding to said month is due. However, if the moratorium is agreed after day 5, since the payment was already due, the VAT will have accrued and, therefore, it must be paid to the Administration.

To avoid this type of situation, it is recommended that any contractual modification is always made in writing, stating the form and the moment in which the moratorium has been agreed .

All this applies both to the moratorium approved by the Government of Spain in Royal Decree 15/2020 of April 21, on complementary urgent measures to support the economy and employment, and to other types of moratoriums agreed by the parties.

(ii) Discount in the price: It is possible that, in view of the difficult situation in which we find ourselves, the landlord agrees to grant a discount in the rental price. In this case it is important to take into account the moment in which the discount is understood to have been granted.

If it is granted prior to the accrual of VAT (prior to the requirement to pay the fee), the situation will not have too many complications for the lessor since his invoice must be issued for the new price agreed by the parties (usual price less the discount).

However, **if the discount is agreed once the payment of any of the installments has been demandable, the lessor will be forced to rectify his initial invoice** for the amount of the discount since, according to VAT legislation, producing, as a consequence of the discount granted, a modification of the tax base and, therefore, of the fees associated with it.



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cancellation is agreed.

If it is agreed prior to the payment of any of the installments, the situation will be very similar to that of the discount. That is, the lessor must issue his invoice for the new agreed price (usual price minus the amount forgiven).

However, **in the event that the forgiveness is agreed after the accrual of VAT, the tax base must be modified, as in the case of discounts, by issuing a corrective invoice**. This is contemplated in article 80 of the VAT Law when it states that the taxable base of the tax must be modified when, in accordance with commercial practices, the price of the encumbered operations is altered after the moment in which the operation has been carried out.

(iv) Total debt forgiveness: Although we understand that it is not the most common, there may be cases in which the lessor agrees to forgive the debt in full. In this case we could find ourselves before an operation that, despite not having a price, is subject to VAT.

It would be a self-consumption of services that, in accordance with the provisions of article 12.3 of the VAT Law, will be subject to the tax and, for which the corresponding VAT quotas should be paid, provided that it is produced for purposes other than those of those of the activity of the taxable person.

Determining when the provision of services for free is done for your own purposes or that of the taxpayer's activity has always been a complex task.

In this regard, the **General Directorate of Taxes has indicated in its query V2053 / 2020 dated June 23, that the voluntary forgiveness of the rent of a lease cannot be interpreted in the sense that it will serve the purposes of the company Therefore, self-consumption would be subject to VAT. However, making use of the power that the VAT Directive grants in its article 26 to the Member States, the General Directorate of Taxes points out that, since the non-subjection of this type of situation would**



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It is, in our opinion, a somewhat confusing pronouncement. In the first place, it is not clear that the total cancellation of the debt carried out by a lessor does not serve the purposes of its activity. On the other hand, the argument used that there are no distortions in competition as a result of the closure of business premises when not all were forced to close is also confusing. Some stores were able to remain open as long as they did not go to the public but instead established a home delivery system, so not all stores have been in the same situation during the state of alarm.

In our opinion, it would have been simpler and more correct to argue that self-consumption (remission of income) is not subject to VAT since it serves the purposes of the lessor's activity.

(v) Non-payment: The last of the situations that could occur is the definitive non-payment of the rental income. **The VAT quotas accrued as a result of deliveries of goods or services must be paid to the Administration, regardless of whether they have been paid by the recipient .**

Sections three and four of article 80 of the VAT Law, regulate the possibility, provided that a series of strict temporary requirements are met, that the taxable person can modify the VAT tax base when the invoices issued to their clients have been unpaid. For this it will be necessary to distinguish whether the recipient of the operations is in bankruptcy or not. The procedure, in summary, implies that after a period of one year (six months in the case of small companies) has elapsed from the accrual of the passed tax without having obtained full or partial collection of the credit or from the publication in the BOE of the declaration order bankruptcy of the debtor, the taxable person will have a period of three months to modify the tax base and issue the corresponding amending invoice that must be sent to the recipient of the operation. After this, the taxable person has a period of one month to notify the Tax Agency of the issuance of the amending invoice.

In accordance with all of the above, we see how the different situations that may arise as a consequence of the crisis in the sector of leases of premises and offices can have a significant impact in the field of VAT. Any contractual modification or any alteration in the payment schedule must be made taking into account their VAT taxation . Otherwise, there may be situations in which the lessor,

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