

Resolution of February 24, 2025, of the GDT VAT rate applicable to bread

On 27 February 2025, the Resolution of 24 February 2025, of the General Directorate of Taxes, on the rate of Value Added Tax (hereinafter, VAT) applicable to bread, was published in the Official State Gazette.

This Resolution is published in view of the need to adapt the tax regulations as a result of Supreme Court Judgment no. 1610/2024, of 15 October 2024, where the High Court established that the wording of article 91.Two.1.1^o, letter a) of Law 37/1992, on Value Added Tax (hereinafter, VAT Law), in relation to the non-application of the super-reduced VAT rate of 4% to bread considered special by Spanish technical-health and food regulations, it is opposed to the principle of neutrality of VAT, in its facet of guaranteeing free competition in the light of the doctrine of the Court of Justice of the European Union (hereinafter, CJEU).

Background

Article 91.Two.1.1^o, letter a) of the VAT Law, provides for the application of the super-reduced VAT rate of 4% to deliveries, intra-community acquisitions or imports of common bread, as well as frozen ordinary bread dough and frozen common bread intended exclusively for the production of common bread.

On the other hand, Article 91.One.1.1 of the same law establishes the application of the reduced rate of 10% to deliveries, intra-Community acquisitions and imports of substances or products, whatever their origin, which, due to their characteristics, applications, components, preparation

and state of conservation, are likely to be habitually and suitably used for human or animal nutrition. in accordance with the provisions of the Food Code and the provisions issued for its development.

In accordance with the wording of the regulation, the General Directorate of Taxes (hereinafter, GDT) had been considering that the application of the super-reduced rate of 4% should be restricted to common bread, according to the definition given in the Food Code and its implementing provisions, therefore not applicable to special breads.



For the purposes of this distinction, it is Royal Decree 308/2019, of 26 April, which approves the quality standard for bread, which regulates in its articles 3 and 5 the concept of common bread and special bread, respectively, referring to their denominations in articles 4 and 6 of the same legal text.

In short, the application of the super-reduced VAT rate of 4% was restricted to supplies, intra-Community acquisitions and imports of the varieties included in the

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denomination of common bread, while the varieties included in the denomination of special bread had to be taxed at the reduced rate of 10%.

Supreme Court Judgment No. 1610/2024

Supreme Court Judgment No. 1610/2024, of 15 October 2024, resolves the appeal filed by a bread manufacturing company, which saw the Administration deny the application of the super-reduced rate of 4% to the extent that, in the manufacturing process, it added components not provided for in the technical-sanitary regulations for common bread.

However, the Supreme Court, in the light of the case-law of the CJEU (cases C-259/10, C-260/10, C-499/16 and C-515/20), considered that there was no reason to make the application of the super-reduced rate of 4% subject to the concepts provided by the technical-health and regulatory standards, considering them to be old, for non-fiscal purposes and obsolete.

The High Court understands that the principle of neutrality of VAT is violated - distorting free competition - confirming categorically that the difference between the tax rates must take into account the perspective of the average consumer on the products.

Resolution of the General Directorate of Taxes



The GDT, in application of article 12.3 of Law 58/2003, of 17 December, General Tax Law (hereinafter, LGT), in order to guarantee legal certainty, establishes **that the super-reduced rate of 4% will be applied** to deliveries, intra-community acquisitions or imports of all the products referred to in Royal Decree 308/2019, as well as products that, responding to the definition of ordinary bread, special bread or naturally semi-processed products, have been subject to special treatment to reduce their gluten content, as well as those in which the flour has been replaced by other gluten-free ingredients in a natural way, even if these are the majority in their composition.

As for **its temporal effects**, the Resolution accepts the provisions of the Judgment of the Supreme Court, so it will have *ex tunc effects*, that is, from the entry into force of the rule it interprets, with the limits derived from the principle of legitimate expectations, arising from the principle of legal certainty enshrined in art. 9.3 of the Spanish Constitution.

INFORMATIVE NOTE



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For more information, please do not hesitate to contact us at the following email addresses:

Yolanda Cano Guerrero

Partner

yolanda.cano@blnpalao.com

Víctor Olivos Reyes

Senior Lawyer

victor.olivos@blnpalao.com

Cristina Aguilera Aguilera

Junior Lawyer

cristina.aguilera@blnpalao.com