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Advice case title: Boosting Minho River cross-border sharing services

Full official name of the advised entity: European Grouping of Territorial Co-operation of the Rio Minho

Name of the expert contracted for the advice case: Carmen José López Rodríguez

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I. Executive summary

a) Problem or need addressed by this report:

The situation addressed herein is the problem related to the application of tax rules and formalities when designing and providing shared services in the cross-border area.

In this regard, the legal and fiscal framework of the provider, activity and/or service to be provided is pointed out as an obstacle to the emergence of pilot experiences of this type of public services.

Specifically, the problem raised is linked to the service, called “Rio Minho e-bike”, which consists of a shared management system for electric bicycles between six high mobility urban centers (in collaboration with the Eurocities Cerveira-Tomiño, Valença-Tui and Monção-Salvaterra), and connected to the cross-border eco route of the Miño River.

This service, conceived as a sustainable mobility project framed within the scope of the Smart_Miño project, co-financed by Interreg V-A, is part of the non-polluting mobility network and is designed to transport people to work or school, as a valid or complementary alternative. to existing modes of transport.

The problem arises around this, firstly in terms of the disparity in the regulation of the applicable VAT/VAT rate and, secondly, in terms of the uncertainty regarding compliance with formal obligations and management and the aforementioned tax with respect to the tax administrations of the countries in whose territory the service is provided and which, therefore, could have jurisdiction regarding it.

b) Recommended solutions based on the objectives of the report

Without prejudice to the development of this point in the body of the report, for the purposes of succinctly exposing the recommended solutions, it is appropriate to refer separately to the two obstacles raised:

1) The first of the obstacles mentioned is the issue related to the difference in VAT rates applied to some products and services, which in the opinion of the entity that manages the service could imply complications in terms of competition and equity, since Although the value added tax (VAT) in Spain and Value Added Tax (VAT) in Portugal has general rules in the European Union, its application differs in each community country.

2) Regarding the second of the obstacles, it is related to the management of the operation, collection of income and the delivery of VAT to the respective Member State. This circumstance, according to the requesting entity, “obliges the managing entities of a public service such as the AECT Rio Minho to create a delegation in another member state (in addition to its headquarters), in order to have a tax identification and be a taxable person. before the respective supervisory authority.”
Thus, it is pointed out that the greatest difficulty for the AECT of Río Miño regarding this service is having to “double human and financial efforts to respond to the tax authorities of both countries.”

c) Conclusions

In relation to the differences in VAT rates between countries, as will be detailed in more detail, they are not intrinsically a violation of competition, but they can influence competitive dynamics and can be the subject of analysis if an anti-competitive use of these differences, however this issue is not automatically considered a violation of competition, since differences in VAT rates are aspects of the national fiscal policy of each country.

Competent authorities and regulatory bodies, both nationally and internationally (such as the European Commission in the case of the European Union), may study specific cases if they suspect that differences in VAT rates are being used in an anti-competitive manner, however Although there is some harmonization work at the community level, the setting of the tax rate corresponding to VAT/VAT is basically a national competence, that is, an instrument in the hands of each Member State.

On the other hand, and in relation to the complexity regarding the management of VAT/VAT and the formal obligations inherent to it, although in the case that concerns us, the possible margin of action is reduced from the point of view European and this is limited to the possibility of providing a regulatory mechanism to respond to the increase in cross-border operations and cooperation.

For the purposes of evaluating and taking as reference other instruments approved in the context of community regulations, the reference to the MOSS regime is included, which although it would not be applicable to the services covered by this report, can be taken as a reference as it constitutes a precedent for the simplification of formal obligations when the operation affects the territory of more than one country and, therefore, is subject to independent and diverse regulations and formal obligations.

The reference to this mechanism becomes relevant in order to point out as a possible solution a similar regulatory mechanism for other cross-border services and that goes through a special regime that allows, quarterly or monthly, the businessman or professional to enter the VAT accrued for all your operations carried out in the European Union through a single declaration-settlement submitted electronically to the tax administration of the Member State for which you have opted or which applies.

II Description of the obstacle with indication of the legal/administrative provisions causing the obstacle

Taking as a basis the description made by the requesting entity in relation to the obstacles detected in the problem raised by it, we will go on to explain in detail the context and the situation submitted to the report in order to analyze it more precisely, with the aim to obtain adequate and effective results for the problem or problems posed.

The entity and the territory

The European Territorial Cooperation Group of Río Miño, AECT Río Miño, is a public law entity established on February 24, 2018 under the provisions of Regulation (EC)

No. 1082/2006, of July 5, of the European Parliament and of the Council, of July 5, modified by Regulation (EU) No. 1302/2013, of the European Parliament and Council, of December 17, 2013, which aims to regulate the European Grouping of Territorial Cooperation (EGTC) as a mechanism to facilitate cross-border, transnational or inter-regional cooperation in the European Union (EU).

Among the objectives of the EGTC Río Miño, expressly established in its statutes, are to "promote territorial cooperation among its Members through territorial cooperation actions, including all actions that, with respect to its powers and legislation of the applicable European Union, Portuguese and Spanish, are committed"[1], it is precisely that objective in which the approach to the problem submitted to the report is framed. An objective, on the other hand, directly linked to the function of "conceiving and executing projects or actions to facilitate and promote territorial cooperation in the area in which it exercises its functions, promoting or developing studies, plans, programs and forms of relations." among its members, build, manage infrastructure and equipment and, in addition, provide services of public interest, as well as all those that have to do with cross-border, transnational and interregional cooperation.[2]

For its part, the territorial scope of the entity is that made up, in **Portugal**, of the Inter-municipal Community of Alto Miño, made up of 10 municipalities: Arcos de Val-devez, Caminha, Melgaço, Monção, Paredes de Coura, Ponte da Barca, Ponte de Lima, Valença, Viana do Castelo and Vila Nova de Cerveira.

[1] Clause Four of the Statutes of the European Union of Territorial Cooperation of Rio Minho — EGTC Rio Minho — Between the Comunidade Intermunicipal do Alto Minho (Portugal) and the Provincial Deputation of Pontevedra (Spain).

[2] Fifth Clause of the Statutes of the European Union of Territorial Cooperation of Rio Minho — EGTC Rio Minho — Between the Comunidade Intermunicipal do Alto Minho (Portugal) and the Provincial Deputation of Pontevedra (Spain).

In **Spain**, the territorial scope corresponds to that of the Provincial Council of Pontevedra, made up, in turn, of 16 Galician municipalities: Arbo, A Cañiza, O Covelo, Crecente, A Guarda, Mondariz, Mondariz-Balneario, As Neves, Oia, Ponteareas, O Porriño, O Rosal, Salceda de Caselas, Salvaterra de Miño, To-miño and Tui.

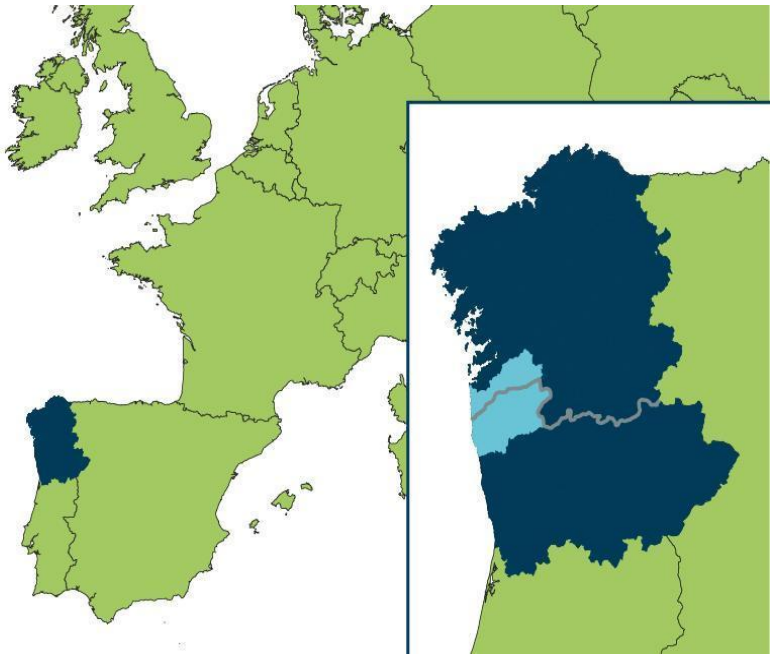

Image 1.- Territorial scope. Source: Website of the requesting entity

Description of the issue raised

In a context of collaboration across borders and, consequently, also of increased cross-border mobility in the territory of the Galicia-Northern Portugal Euroregion, opportunities for cooperation between countries arise and, specifically, the possibility and benefit of carrying out pilot experiences of shared public services.

An example of this reality is precisely the Rio Minho electric bicycle system, which would constitute the first truly joint and shared cross-border public service.

This service, called “Rio Minho e-bike” would constitute a shared management system for electric bicycles between six high mobility urban centers (in collaboration with the

Cerveira-Tomiño, Valença-Tui and Monção-Salvaterra eurocities), and connected to the cross-border eco route of the Miño River.

This service, composed of 46 electric bicycles with built-in GPS, 9 virtual and/or physical parking spaces (4 virtual and 5 physical), system management software, user cards, a backoffice management system, as well as a User APP available in Apple Store and Google Play.

SALVATERRA DE MIÑO

El uso de las bicis transfronterizas empieza a cuentagotas en el Miño

EVA FERNÁNDEZ PRIETO
SALVATERRA / LA VOZ

XOAN CARLOS GIL

Image 2.- Source: La Voz de Galicia

The system described is managed by the EGTC Rio Minho, however the entity is faced with a series of issues in the performance or execution of this service, issues that correspond to the tax area:

1.- DISPARITY IN THE REGULATION OF THE APPLICABLE VAT/VAT RATE

On the one hand, the application of a different VAT rate in each country is proposed, which in the opinion of the entity that manages the service could imply complications in terms of competition and equity, since although the value added tax (VAT)) in Spain and Value Added Tax (VAT) in Portugal has general rules in the European Union, its application may vary in each country.

However, before addressing this issue, a brief analysis is required about the tax that will be applied to the amounts to be received for the provision of the service described in the approach of the requesting entity.

The possibility that an AECT can provide services will be determined by the framework of its powers and, in any case, in accordance with the provisions established in its statutes and regulations.

The ability of the AECT Río Miño to provide services is derived, implicitly, from article 7 of its own statutes, which establishes that the assets of the entity will be constituted, among other assets and rights, “by the income received for the services provided, for the management of services, for the use of its goods and equipment and for the performance of tasks."

One of the issues that the requester of the report raises is the distortion that this difference in tax rates can generate in the field of competition. However, it is worth clarifying that this issue is not automatically considered a violation of competition, since differences in VAT rates are aspects of the national fiscal policy of each country. Competent authorities and regulatory bodies, both nationally and internationally (such as the European Commission in the case of the European Union), may study specific cases if they suspect that differences in VAT rates are being used in an anti-competitive manner. for example, to distort the market or unfairly benefit certain companies to the detriment of others.

In summary, differences in VAT rates between countries are not inherently a violation of competition, but they can influence competitive dynamics and may be subject to analysis if anti-competitive use of these differences is suspected.

From the perspective of Community Law, the following legislation would be applicable:

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJEU, 28-November-2006).[3]

Council Directive (EU) 2020/285 of February 18, 2020 amending Directive 2006/112/EC, relating to the common system of value added tax, with regard to the special regime of small businesses, and Regulation (EU) No. 904/2010, with regard to administrative cooperation and the exchange of information for the purposes of monitoring the correct application of the special regime for small businesses (OJEU, 02-March-2020)

Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC with regard to the introduction of certain requirements for payment service providers (OJEU, 02 -March-2020)

Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down provisions for the application of Directive 2006/112/EC on the common system of value added tax (OJEU, 23- March-2011)

It is precisely the first of them, Council Directive 2006/112/EC, of November 28, 2006, that specifies the application of this tax on services and, therefore, on the services that constitute the initiative. from Rio Minho e-bike:
"Article 2 1. The following operations will be subject to VAT:

[3] Article 1
1. This Directive regulates the common system of value added tax (VAT). 2. The principle of the common VAT system consists of applying to trade in goods and services a general tax on consumption exactly proportional to the price of the goods and services, regardless of the number of operations that occur in the circuit of production and distribution preceding the tax phase. In each operation, VAT will be payable, settled on the basis of the price of the good or service taxed at the tax rate applicable to said goods and services, after deduction of the amount of the tax payments accrued that have directly taxed the cost of the various constituent elements. of the price. The common VAT system will apply up to and including the retail sales stage.

[…]

c) the provision of services carried out for consideration in the territory of a Member State by a taxable person acting as such."

Once it has been determined that the services provided within the framework of the "Rio Minho e-bike" would be subject to VAT in accordance with a Community Directive, it is necessary to remember the different regulations that regulate, with respect to each country, the tax rate that is applicable:

- In Spain:

In Spain, the percentage of Value Added Tax (VAT) is regulated in Law 37/1992, of December 28, on Value Added Tax. The article that establishes the VAT tax rates is article 90 of said law.[4]

This article details the different tax rates applicable to different goods and services, such as the general rate, reduced rates and super-reduced VAT rates that apply in Spain.

- In Portugal:

For its part, in Portugal, the percentage of Value Added Tax (VAT) is regulated mainly in the Value Added Tax Code, approved by Decree-Law No. 394/84, of December 26.

The VAT percentage applicable to different goods and services in Portugal is established in article 18 of the VAT Code[5], which details the general, reduced and special tax rates applicable to different transactions and economic activities.

[4] Article 90 General tax rate
One. The tax will be required at the rate of 21 percent, except as provided in the following article.

[5] The tax rates are as follows:
a) For imports, transfers of goods and provision of services included in list i annexed to this diploma, the rate of 6%;
b) For imports, transfers of goods and provision of services included in list II annexed to this diploma, the rate of 13%;
c) For other imports, transfers of goods and provision of services, the rate is 23%.

In this way, although there is some harmonization work at the community level, the setting of the tax rate corresponding to VAT/VAT is basically a national competence, that is, an instrument in the hands of each Member State. In fact, the possibilities of homogenizing this tax have even been tried and discussed within it, however it is a complex issue for which a solution has not been reached due to the economic, political and social differences between the member countries, which What may be a reasonable VAT rate for one country may be too high or too low for another.

On the other hand, some countries use VAT as a fiscal instrument to stimulate certain sectors or to redistribute wealth, which makes it even more difficult to create a single tax.

As a result of the reason and the situation described is that currently, EU countries have greater freedom to establish their own VAT fees, which has led to a greater diversity in terms of tax fees and benefits and services to them that apply.

TYPE OF VAT/ VAT APPLICATION

Once this question is clarified, it corresponds to determining what would result in the case of the service described in the type of VAT or, in this case, VAT that resulted from the application.

In general terms, in a cross-border transaction, the VAT of the country where the service is provided is applied. However, the determination of this circumstance is not an easy task, the rules that apply to the place where operations are carried out in VAT constitute a set of rules for complex application at the time of determining where the tax is due. The European legislator has allowed the member States to opt for establishing a safety clause that allows a set of service provisions to be attracted to the territory of each State based on the use or exploitation of the same in that territory. The conditions and requirements required to apply this clause imply the analysis of a problem without difficulty and complexity, in addition to contributing a good deal of legal uncertainty.

IN ACCORDANCE WITH SPANISH REGULATIONS and more specifically in accordance with the provisions of article 70.Uno.9.º of the LIVA, the leasing services of means of transport are understood to be provided in the territory of application of the tax in the following cases :

- Short-term rentals when the means of transport are actually put into the possession of the recipient in said territory.

- Long-term leases when the recipient does not have the status of businessman or professional acting as such as long as he is established or has his domicile or habitual residence in the aforementioned territory.
For these purposes, short-term will be understood as the possession or continued use of means of transport for an uninterrupted period of no more than 30 days and, in the case of ships, no more than 90 days.

Taking into account this information, and in accordance with the provisions of the rules of use of the "e-bike riominho" system, in this case we would be in the case of a short-term rental.

In reference to the above, the regulations also clarify what are to be considered means of transport. In accordance with article 38 of Council Implementing Regulation (EU) 282/2011 of 15 March, vehicles, whether motorized or not, and other devices and equipment designed for the transport of people or objects from one place to another , which can be towed or pushed by vehicles, and which are normally intended for and suitable for transport tasks.

In this sense, the following vehicles will be means of transportation, among others:
Land vehicles such as cars, motorcycles, **bicycles**, tricycles and caravans.
Trailers and semi-trailers.
Railway cars.
Boats.
Aircraft.
Vehicles specifically designed for the transportation of the sick or injured.

Tractors and other agricultural vehicles.
Vehicles for disabled people with mechanical or electronic propulsion.

For its part, IN ACCORDANCE WITH PORTUGUESE REGULATIONS, Portuguese VAT is applied to transactions that are considered to take place in Portuguese territory. The law establishes rules to determine the place where different transactions are considered to take place.

In the case of supply of goods, the general rule is that the goods are considered to be supplied in Portuguese territory if they are delivered to the recipient in Portugal, unless they are transported from another EU Member State, in which case the supply is considered to be takes place at the place where the transport begins. There are other exceptions that may be applicable to the general rule.

In the case of provision of services, the general rule is that the services are considered provided at the principal place of business or permanent establishment of the recipient, when the recipient is a merchant or professional (B2B). However, if the recipient is a final consumer, the services are considered provided at the supplier's place of business (B2C). Several exceptions may apply to the general B2B and B2C rule, such as in the case of services whose object is real estate (taxable where the real estate is located), restaurant and catering services (taxable where the services are provided), transportation services. passenger transportation (taxable where transportation services are provided), cultural, artistic, sports, scientific, educational and leisure services (taxable where the activities are physically carried out).

In the present case we are faced with the difficulty that it is especially complex to be able to determine a single place (country) as the place of provision of the service, since the bicycles can be rented or picked up in either of the two countries, with the only requirement whether it is in one of the 9 physical or virtual stations, which would be available in the following locations:

- Eurocity Cerveira-Tomiño
- Vila Nova de Cerveira
- Tomiño

• Eurocity Tui-Valença
• Eurocity Monção-Salvaterra

In any of these places the user will be able to pick up and return the bicycles, so it does not seem easy to determine a single place where the recipient will take possession (as established by Spanish regulations) nor would there be a single place of activity for the supplier (criterion referred to in Portuguese regulations) nor a single permanent establishment for the purposes of VAT/VAT.

In this regard, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax mentions the **concept of permanent establishment** in its article 43:

"The services will be considered provided in the place where the headquarters of the economic activity of the person providing them is located or in the place where the latter has a permanent establishment from which the provision of services is supplied or, in the absence of the headquarters or the aforementioned establishment, the place of your domicile or habitual residence."

The term **Permanent Establishment** is a concept used exclusively in the tax field, and its purpose is to determine or establish the right of a State to tax certain business income obtained in that State by a non-resident.

For the case at hand, we could conclude that, with the AECT Rio Minho having an alternative establishment to the registered office in another member state and also providing the service through this other location, we would find ourselves faced with this figure.

In this regard, it is considered that a natural or legal person operates through a permanent establishment in another country when for any reason it has, on a continuous or habitual basis, facilities or workplaces of any kind, in which it carries out all or part of its activity.

The fundamental characteristic of the permanent establishment is the absence of legal personality other than that of its main branch or registered office, as is also the case in this case.

It will be understood that management headquarters, branches, offices, factories, workshops, warehouses, stores or other establishments, mines, oil or gas wells, quarries, agricultural or forestry operations constitute a permanent establishment. or livestock or any other place of exploration or extraction of natural resources and construction, installation or assembly works whose duration exceeds six months.[6]

As already mentioned, the concept of permanent establishment becomes relevant when determining concepts such as the place where the VAT taxable event takes place, who is the taxable person of a certain operation, how, where and in what way it is carried out. You may exercise the right to deduct input VAT payments and the right to obtain a refund. All of them are fundamental concepts for the correct functioning of VAT and are part of the mechanism that governs the tax.

Although the VAT Directive mentions the concept of permanent establishment, it does not include a definition of it. To do this, it is necessary to refer to Regulation 282/2011, EC, for the Implementation of the Directive, which states that permanent establishment should be understood as *"any establishment, other than the headquarters of economic activity (...) that is characterized by a sufficient degree of permanence. and an adequate structure in terms of human and technical resources that allow it* ***to receive and use the services provided for the needs of said establishment."***

It should be clarified that the concept of permanent establishment is not aligned for the purposes of direct and indirect taxes, for this reason, an entity can be established and not established in a certain territory at the same time, depending on the type of tax in question.

Permanent establishments in indirect taxation

[6] It is important to clarify that the permanent establishment will have the same personality as the entity to which the main domicile corresponds, without prejudice to the country in which it operates through a permanent establishment granting it a NIF for the purposes of being able to operate and pay taxes there.

Specifically in VAT and other indirect taxes, the figure of the permanent establishment has great relevance in order to **clarify in which country and according to what rules the tax must be paid.**

In this sense, in the case of VAT, from the above it follows that both countries could consider the service provided in their respective territory depending on where they consider that its provision takes place when the bicycles are placed in the consumer's possession at different locations or establishments.

Therefore, the problem posed by the entity requesting the report could arise, subjecting the same service to different VAT percentages.

2.- SIMPLIFICATION IN THE TAX MANAGEMENT OF THE OPERATION AND DELIVERY OF VAT TO THE RESPECTIVE MEMBER STATE

In addition to the need for the permanent establishment to be registered in each of the countries, in this case, in Spain and Portugal, the VAT collection must be communicated and settled, through the corresponding periodic declarations, in both countries, which will imply compliance with formal obligations, as well as the payment of tax collection to both tax administrations depending on the country in which, in each operation, the provision of the service is considered carried out, therefore giving rise to a duplicity in terms of processing.

When a company has permanent establishments in different countries and carries out operations subject to VAT, each permanent establishment is generally considered a separate entity for tax purposes. This means that, generally, each of these permanent establishments has its own VAT declaration and payment obligations in the country where they are located.

Each permanent establishment must carry out its own VAT settlement, based on the operations it carries out in the country in which it is established. Specifically, separate VAT returns must be submitted for each permanent establishment, in accordance with

the tax regulations of the country in which they are located, on the other hand, invoices will be required to be issued and accounting records maintained in accordance with the local tax requirements of each country for the operations carried out by each permanent establishment.

Spain and Portugal have a bilateral agreement to avoid double taxation and prevent tax evasion with respect to taxes on income and wealth[7]. This agreement is relevant to the taxation of income generated by the permanent establishments of companies located in both countries and its main objective is to prevent a company with a permanent establishment in one of the countries from being taxed twice on the same income, once in the country where the income is generated and again in the country of residence of the company.

This agreement between Spain and Portugal includes specific provisions on how the income obtained by permanent establishments should be taxed and treated, taking into account factors such as the allocation of profits or the methodology to avoid double taxation, however this Agreement provides as a material scope of application referring to the following taxes:

a) in Spain:

- Personal Income Tax;
- Corporate Tax; and
- local income taxes.

b) in the case of Portugal:

- Personal Income Tax;
- the Income Tax of Legal Entities; and
- Spills it.

[7] Convention between the Kingdom of Spain and the Portuguese Republic to avoid double taxation and prevent tax evasion in matters of income taxes and Protocol, signed in Madrid on October 26, 1993. Instrument of ratification dated March 3, 1995.

Taking into account the indicated scope, the aforementioned Convention is, therefore, not applicable to the approach that is the subject of this report as it does not include VAT/VAT.

II. Description of possible solution(s)

As a consequence of the analysis carried out in the points or sections developed above, we now proceed to address a possible solution to the issues raised, and it should be noted that, in the case in question, the possible margin of action is reduced from the point of view of the from a European point of view and which is mainly limited to the need to articulate a regulatory mechanism to respond to the increase in cross-border operations and cooperation that, in this case, is evident through the service, called “Rio Minho e-bike ”, but which could be extrapolated and transferred to other areas that share the same problem, and must be addressed from this perspective in order to provide a more complete answer than the one limited to this specific question.

For the purposes of evaluating and taking as reference other instruments approved in the context of community regulations in relation to services in which different national territories are involved, it is appropriate to refer to the MOSS regime relating to VAT on digital services, which aims to simplify the formal obligations of companies that carry out distance sales or provide services whose recipients are final consumers (B2C transactions) in different member states of the European Union.

The MOSS regime is mainly regulated by the Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJEU, 23.03.2011 L 77)

This special VAT regime is optional and allows VAT, a tax generally owed in several EU countries, to be settled in a single EU country.

At this time, providers of cross-border telecommunications, television and radio broadcasting services or cross-border digital services to persons who are not taxable subjects can benefit from the regime.

The services contemplated in the mini one-stop shop regime are, among others:

Website Hosting
Supply of computer programs
Database access
Downloading apps or music
Online games
Long distance education.

Therefore, it is not applicable to a service such as cross-border bicycle rental, but nevertheless, it can constitute a precedent for articulating analogous solutions or solutions that start from a comparable situation.

Thanks to the single window, and within its scope of application, it is not necessary to register with the tax administrations of each EU country in which it operates, but the operator will be able to register for VAT purposes, make declarations, tions and settle payments in a single country. You must apply the rules of the scheme to all EU countries in which you provide services.

In principle, under this regime, the operator is entitled to provide services in another EU country without having to submit to all the administrative provisions and procedures of that country. However, he may be required to notify the public administration of his intention to offer his services in that country (the destination country must have justified reasons for imposing its requirements).

This mechanism, which affects the provision of services and remote sales of goods, has been incorporated into the legal systems of both Spain and Portugal, and contains important modifications in the field of taxation of remote purchases of goods by part of final consumers, generally through the internet and digital platforms and that are sent from a Member State or a third state (outside the European Union), and to the provision of services carried out by companies and professionals not established in the Member state where, in accordance with the rules for the location of the taxable event, they would be subject to VAT.

This system seeks to provide a response and solution to the needs of the market, avoiding deficiencies and damages for the Member States, but also for companies and consumers, such as, for example, the disproportionate administrative burden for companies and professionals, a cost that discouraged operating cross-border.

The special regime set out will allow, quarterly or monthly, the businessman or professional to pay the VAT accrued for all his operations carried out in the European Union through a single declaration-settlement submitted electronically to the tax administration of the Member State for which he has opted or be applicable.

Spain has proceeded with the pending transposition of the Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC with regard to certain tax obligations on the added value for the provision of services and distance sales of goods (it had already been subject to partial transposition previously by Law 6/2018, of July 3, on General State Budgets for the year 2018 and whose entry into force occurred on July 1 January 2019) mainly through Royal Decree-Law 7/2021, of April 27.

Portugal has transposed articles 2 and 3 of the Directive through Law 47/2020.

The reference to this mechanism becomes relevant in the matter under study for the purposes of proposing as a possible solution a similar regulatory mechanism for other cross-border services and that goes through a special regime that allows, quarterly or monthly, the businessman or professional to pay VAT. accrued for all your operations carried out in the European Union through a single declaration-settlement submitted electronically to the tax administration of the Member State for which you have opted or which applies. As is the case with the system described, and which would facilitate and streamline operations and provision of services on both sides of the border without having to bear the difference and bureaucratic and management cost of submitting to the obligations and formalities of two different tax administrations.

III. A full list of all legal provisions relevant to the case

European regulations

Council Directive 2006/112/EC, of November 28, 2006, Relating to the common system of value added tax (OJEU 11.12.2006 L 347).

Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC with regard to the place of provision of services (OJEU 20.02.2008 C 329).

Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJEU, 23.03.2011 L 77)

Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC with regard to certain tax obligations on the added value for the provision of services and distance sales of goods (OJEU, 29.12.2017 L 348).

Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain national supplies of goods (OJEU, 02.12.2019 L 310).

Council Directive (EU) 2020/285 of February 18, 2020 amending Directive 2006/112/EC, relating to the common system of value added tax, with regard to the special regime of small businesses, and Regulation (EU) No. 904/2010, with regard to administrative cooperation and the exchange of information for the purposes of monitoring the correct application of the special regime for small businesses (OJEU, 02.03.2020 L 62).

Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC with regard to the introduction of certain requirements for payment service providers (OJEU, 02.03.2020 L62).

Spanish regulations

Law 37/1992, of December 28, on Value Added Tax.
(«BOE» n. 312, 29.12.1992.)

Royal Decree-Law 7/2021, of April 27, transposing European Union directives on competition, prevention of money laundering, credit institutions, telecommunications, tax measures, prevention and repair of environmental damage, displacement of workers in the provision of transnational services and consumer defense.
(“BOE” n. 101, 28.04. 2021.)

Portuguese regulations

Value Added Tax Code, approved by Decree-Law No. 394/84, of December 26.
(Diário da República n. 297/1984, 1º Suplemento, Série I 1984.12.26)

Law 47/2020 Transposes the articles 2nd and 3rd of Council Directive 2017/2455, of December 5, 2017, and Council Directive (EU) 2019/1995, of November 21, 2017. 2019, altering the VAT Code, the VAT Regime in Intracommunity Transactions and complementary legislation relating to this tax, in the area of electronic commerce processing.
(Diário da República no. 164/2020, Series I of 2020-08-24).

Bilateral regulations

Convention between the Kingdom of Spain and the Portuguese Republic to avoid double taxation and prevent tax evasion in matters of income taxes and Protocol, signed in Madrid on October 26, 1993. Instrument of ratification of March 3, nineteen ninety five.
(Diário da República n. 24/1995, Série I-A de 1995.01.28)
(«BOE» n. 266, de 7.11.1995).