



## The automatic application of the deduction of 7,5% imposed by Royal Decree Law 8/2010 has been questioned

*Judgment of the contentious-administrative Court number 8 of Seville, of 6 September 2012*

### Background

Royal Decree-law 8/2010 was issued in May of 2010. Among other things, it imposes the obligation to apply a deduction of 7,5% to the purchases of some medicinal products starting from 1st of June of 2010.

One of the issues that the pharmaceutical industry raised in the hospital market on the occasion of the approval of this regulation was that in the case of supplies of medicinal products made after the 1st of June of 2010 without a supply agreement in force, there should not be an obligation to keep supplying the medicinal products at the same price as the price offered before such date and to apply, on such price, the deduction of 7,5%. It must not be forgotten that on many occasions the price offered was already much lower than the authorized ex-factory price.

On many occasions public hospitals placed orders applying the last price at which the company had supplied the medicine before the 1st of June of 2010, and they then simply demanded the deduction of 7,5% foreseen in Royal Decree-law 8/2010. Upon such practice, and because it was unsustainable to apply a new deduction on an already very reduced price, several companies did not accept the conditions that were set forth in such purchase orders. In response, they offered to sell their medicinal products at the same price at which they had been selling it prior to the 1st of June of 2010, with the express indication that such price already included the 7,5% deduction provided for in Royal Decree-law 8/2010.

### Judgment of the contentious-administrative Court of Seville

In this case, resolved by the Court of Seville, it was argued that as the purchase was not covered by any agreement in force formalized before the 1st of June of 2010, the medicinal product could be sold at the offered price, which included a discount, over the ex-factory price, superior to 7,5%, without the administration being able to demand a second additional deduction of 7,5% in virtue of the Royal Decree-law.

It was also argued that the hospital knew the final sale price that was specified on the delivery note and that it accepted such price when it admitted the order.

The judgment points out that Royal Decree-law 8/2010 did not eliminate the possibility for parties to negotiate the price as long as the legal deduction was respected.

Thus in the absence of a supply agreement in force fixing a certain binding sales price, the company had the right to offer, in transactions conducted after the 1st of June of 2010, the same price as the one it had previously proposed, and to consider that the discount offered, which was higher than 7,5% of the ex-factory price, already included the compulsory deduction resulting from Royal Decree-law 8/2010.