



## The application of the new VAT rate for certain medical devices is imminent

*The amendments that Law 28/2014 of 27 November introduces to Law 37/1992 on Value Added Tax will come into force in the new year*

On January 1 2015 the amendment of Law 37/1992 on Value Added Tax, as carried out through the recently-published Law 28/2014, will come into force. Law 28/2014, among other matters, raises the VAT rate that applies to the sale of certain categories of medical devices and medical equipment, in order to comply with the ruling of 13 January 2013 of the European Court of Justice (case C-360/11), in which the Court decided that the application of the reduced tax rate to such categories was not compatible with European regulation.

### General rate vs. reduced rate

As we explained in our Capsulas No. 138, of November 2012, this ruling originates in proceedings initiated by the European Commission, as it considered that Spain had overstepped its limits by allowing the application of the reduced VAT rate to certain medical devices and medical equipment and appliances, beyond what was allowed under EU regulation.

In its ruling, the ECJ pointed that the exceptions to the general VAT rate must always be applied and interpreted restrictively and it concluded that not all medical devices may benefit from a reduced VAT rate, and neither can all medical equipment, materials and other appliances, except those normally intended for the exclusive personal use by people with disabilities. The Court also added that medicinal substances used to manufacture medicinal products cannot benefit from a reduced VAT rate, unless these substances can be directly purchased and used by consumers.

### Products that may fall under the reduced rate

In order to comply with the ruling, from January 1 2015 the general tax rate (21%) shall apply to the supply of medical equipment, machines, medical devices, and other appliances for medical or hospital use. The reduced VAT rate (10%) will apply to certain products designed for the exclusive personal use of people with physical, mental or sensory disabilities, and which are intended to alleviate or treat pathologies. The categories that fall within the scope of this exception are detailed in a list in Law 28/2014. It is worth remarking that this list includes products that can benefit from the reduced rate those products that allow for a "mixed" use (that is, alleviating or treating pathologies in people with or without disabilities) but that are clearly useful for disabled people.

Thus, it is very important that operators analyze the situation and features of the medical devices and equipment that they commercialize in our market, in order to verify the correct rate that must be applied. Even though this exercise may seem uncomplicated at first, truth is that, as to certain categories of products it may not be so easy. An adequate assessment of this matter before the new regulations come into force will doubtlessly help to reduce the risk of conflicts with the Spanish tax authorities.