



# Capsulas

## Updates in the Patronage Law and the eternal question: are we dealing with a donation, sponsorship or collaboration?

*Royal Decree-Law 6/2023 of 19 December which amends the Tax Scheme for Non-profit Organisations and Tax Incentives for Patronage Law 49/2002*

### Introduction

Pharmaceutical sector's collaboration is crucial for advancing and promoting clinical research, as well as other activities contributing to the benefit of the health sector and patients. This includes aspects like training, education, and the provision of healthcare services. Typically, healthcare (such as hospitals, foundations, universities and other academic bodies and scientific societies) and patient organisations serve these public interest purposes. In recent years, the legislator has sought to promote this collaboration by offering tax incentives. These incentives are not only for the entities benefiting from these collaborations, but also for all those who, on a not-for-profit basis, collaborate financially in achieving these purposes.

These incentives are established in what is commonly known as the "Patronage Law" (Law 49/2002). Since this Law was passed more than 20 years ago, numerous attempts have been made to improve the patronage regime, with the aim of encouraging these activities.

Following an arduous negotiation and a closely divided vote (172 votes in favour and 171 against), on 10 January, the Congress validated Royal Decree-Law 6/2023, known as the "omnibus decree", which inter alia amends the Patronage Law.

Below we analyse the key modifications introduced by the amendment, focusing on the aspects we deem of interest to stakeholders in the phar-

maceutical sector. We also take this opportunity to clear up any confusion surrounding the terms of "donation", "sponsorship" and "collaboration". In our experience, these concepts can sometimes be misunderstood.

### Forms of patronage

The different forms of patronage include what Law 49/2002 refers to as "donations" (art. 16) and "business collaboration agreements for public interest activities" (art. 25).

A donation is an act of liberality whereby the donor disposes gratuitously of something in favour to another, who accepts it, without any consideration or compensation being received in exchange therefor. For the donor, the donation is a non-deductible expense. However, the donor is entitled to a corporate tax deduction when the beneficiary has availed itself of the special tax scheme of the Patronage Law. The donation must be justified by means of a certificate issued by the beneficiary. In turn, for the beneficiary entity, the donation is exempt income for corporate income tax purposes. VAT does not have to be paid because the donation is not subject to said tax.

A business collaboration agreement for public interest activities is one whereby the beneficiary entity, in exchange for financial support for the performance of its activities of public interest, commits to formally publicize the collaborating entity participation in writing. In terms of taxation, the contribution made by



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the collaborator is a deductible expense in its corporate tax. In practice, the agreement in writing, together with the document proving the transfer of the funds to the beneficiary entity, is sufficient to justify the deduction of the expense. For the beneficiary entity it is also exempt income. On the other hand, the Patronage Law specifies that advertising the collaborating entity's participation does not in any case constitute a service provision and is therefore not subject to VAT.

Occasionally, these business collaboration agreements under Patronage Law are often confused with sponsorship contracts. Sponsorships are regulated in article 22 of Law 34/1988, on General Advertising. The latter defines sponsorships as "an agreement by which the sponsored party, in exchange for financial support for the performance of its activity (...) commits to collaborate in the sponsor's advertising". The key difference with collaboration agreements lies in the importance given to the promotion of the collaborating entity's participation. In A sponsorship, the advertising objectives of the sponsor are more prominent, whereas in collaboration agreements the primary focus is on directing the financial support towards achieving the purposes of the beneficiary entity. Advertising expenses are deductible for the person incurring them and, as there is consideration, it is subject to VAT. The beneficiary entity must issue the corresponding invoice. The contribution received by the beneficiary entity is exempt income.

It could also happen that, in addition to promoting the collaboration, the beneficiary entity provides other types of services to the collaborating entity (e.g., scientific advice, the preparation of reports or similar activities). In these cases, regardless of the name given to the agreement by the parties, the provision of such services would be subject to VAT and the beneficiary entity would have to issue an invoice.

Finally, it should be recalled that Farmaindustria's Code of Good Practice regulates the aforementioned forms of patronage under the same umbrella: "Donations and Grants" (Art. 15). According to the Code, they are only permitted if (i) they are conducted for the purpose of collaborating with healthcare, research, teaching/training or social or humanitarian care; (ii) they are formalized in writing; and (iii) they do not constitute an inducement to recommend, prescribe, purchase, supply, sale or administer medicines.

### Key developments

In donations, the donor may make contributions in cash or in kind, either of goods or rights. The amendment clarifies that the assignment of use of movable or immovable property (also known as "bailment"), for a specific period of time, without consideration, entitles to relief.

As indicated above, in donations the donor does not receive any consideration. Another development is that, exceptionally, the donor may receive goods or services delivered or provided by the donee or beneficiary provided these are of symbolic nature. These are considered to be of a symbolic nature when the value of such goods/services does not represent more than 15% of the value of the donation and does not exceed the amount of 25,000 euros.

With regard to the tax incentives, for the donor, the relief percentage applicable to the corporate income tax liability is increased from 35 % to 40 %. In these cases of loyalty of donations, the relief increases from 40% to 50%. A "loyalty donation" refers to a charitable contribution made by a donor to the same entity consistently over the two immediately preceding tax periods, provided that the amount of the donation in the same year and in the previous year is equal to or



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greater, in each of them, than that of the immediately preceding year.

With regard to business collaboration agreements, it is now specified that financial aid may be in cash or in kind, or may also consist of the provision of services that are usually carried out by the collaborating entity. The amendment also incorporates new features in relation to the publicity of the collaboration. Until now, this publicity was carried out by the beneficiary only. Now, it can be carried out either by the beneficiary or by the collaborating entity.

Finally, in the case of both donations and business collaboration agreements, the Patronage Law requires that beneficiary entities must earmark at least 70 % of certain income and revenues for public interest purposes. It is now added that that the earmarking may be direct or indirect.

With the approval of Royal Decree-Law 6/2023, all these measures are in force as of 1 January 2024.

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