

TAXATION OF AGRICULTURE: SPECIAL REFERENCE TO OECD AND SPAIN

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SUMMARY

Agriculture is one of the economic sectors experiencing greater uncertainty due to factors beyond the control of governments. It is for this reason that taxation is used as an incentive to favor the agricultural sector. This paper deals with the economic conditions that influence the agricultural sector according to the OECD, in particular with the case of Spain where there is a special constitutional protection for the agricultural sector. This aspect has resulted in different tax benefits from the direct and indirect taxes borne by the farmers.

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If we place ourselves within an international context, we may decide that according to the OECD (2005), the greater part of member

countries afford preferential treatment to the agricultural sector, although it is always difficult to quantify the potential tax benefit.

In any case, our analysis should begin with the legal basis that justifies a specific tax treatment for the agricultural sector, vis-a-vis other economic sectors. After considering this aspect, one must then observe the economic relevance of the sector within the territory in which it is applied. This is so, because undoubtedly, the agricultural activity's contribution to the gross domestic product of a country will depend on such intrinsic factors as entrepreneurial investment, the technology incorporated, labor specialization, as well as on extrinsic ones such as climate conditions, types of crops, etc. In sum, political and economic conditions come together in the expansion of this economic sector.

1. ECONOMIC RELEVANCE OF THE AGRICULTURAL SECTOR IN THE OECD COUNTRIES AND THEIR TAXATION

It is evident that agriculture is an economic sector wherein the prices of products and, therefore, the profitability of production is subjected to greater risks and uncertainties for the producers, consumers and governments in general. Thus, the economic data originating from the agricultural sector is significantly dependent on unforeseeable climate conditions, but as well, on other factors such as the level of inventories that mitigate the differences between demand and supply; energy prices (transportation, bio-fuels, etc.); the rate of exchange that may affect the local prices of basic products; restrictions on imports and exports which increase the volatility of prices in international markets, etc. In this scenario, public investments in research and development in the agricultural sector acquire an essential dimension.

Nevertheless, the agricultural sector's situation must be considered within the framework of the crucial issues arising from the current economic

crisis. In this sense, the trend is toward the increase of the prices of basic products, due to fewer crops in key producing areas, while low inventories reduced the supply available and the recovery of economic growth in developing and emerging economies increased the demand.

The OECD-FAO Report: "2011 Perspectives of agriculture" states that some higher prices are a positive signal for a sector that has been for decades experiencing real decreases in the price of basic products, and will involve an incentive for investing in improvements to productivity, as well as increasing production to make up for the increasing demand for food. However, the supply's response is conditioned by the relative costs of inputs, while the incentives resulting from higher prices at the international level do not always reach producers due to the high transaction costs or the national protectionist policies. In some important producing regions, the increase in the rates of exchange has also

affected the competitiveness of its agricultural sectors, thereby limiting the effects in production.

Thus, it is expected that the agricultural production will increase within short term, as a result of the expected response of the offer to current high prices. The prices of basic products should decrease from the maximum ones of early 2011, although it is expected that in real terms they may in average be 20% higher for cereals (corn), up to 30% for meats (poultry), in 2011-2020, compared to the last decade. The increase in price of basic products is being displaced through the production chain toward the livestock products. It is anticipated that the world agricultural production increase in average, 1.7% annually, although there would be a lower growth in oleaginous crops and secondary cereals, with greater production costs and less improvements in productivity. With respect to the demand, per capita food consumption will increase faster in Eastern Europe, Asia and Latin America, where revenues increase and the population growth diminishes, with dairy products, sugar and meat standing out as products that should experience greater increase in demand.

In any case, even though the agricultural sector appears to show greater resistance to the world economic crisis, the truth is that economic contraction could cause greater difficulties in the sector, since economic recovery does not seem to take off and this could be a cause of concern as stated in the OECD-FAO “2009-2018 Agricultural Perspective” Report¹.

The following chart shows representative data of the agricultural sector in different OECD countries:

Table 1



	Agriculture o/ GDP (%)	Agric Employ. /Work. Active Population	Agric. Export. /Total Exp	Agricultural M. / Total M.
EU - 15	1,9	5,0	3,6	3,5
U.S.A.	1,7	2,7	7,3	1,8
AUSTRALIA	3,2	5,2	17,7	1,1
N. ZEALAND	7,0	8,4	36,3	2,9
CANADA	1,5	5,0		
JAPAN	1,9	5,3	5,6	2,9
OECD MEAN	2,1	8,2	3,2	4,7

Source: OECD

Governments are aware of the need to use the tax instrument to favor the agricultural sector. Thus, according to the OECD, the greater part of member countries provide differential treatment to the agricultural sector, and although it is always difficult to quantify the potential tax benefit, the percentage of developments potentially benefitting from the special systems is lower in France and Germany than in Spain².

The agricultural taxation method varies significantly among OECD members as well as among members of the European Union. However, almost all the governments consider some type of differentiated treatment of direct and indirect taxation of the agricultural sector. The OECD (2005) provides some comparative data in this respect. In income tax there are frequently different estimation systems, generally based on standards rather than on detailed accounting based systems. This is the case, at least, of Austria, Belgium,

1. *Vid. OECD-FAO Report in the Web site: <http://www.oecd.org/site/oecd.faoagriculturaloutlook/48186264.pdf>.*

2. *OECD, “Non-sectorial Policies for the agriculture and the agro-food sectors: taxation and social security”, 2005.*

France, Germany, Italy, Poland, Spain and the United States. It cannot be assured that in all cases these systems imply a preferential treatment, but undoubtedly, they do reduce the accounting and filing costs. In the area of Value Added Taxes it is even more difficult to define the international panorama. There are frequently special systems for agriculture and it is difficult to evaluate whether those systems result in overcompensation.

In France, Income Tax includes, in addition to the general real normal or simplified system, a “special forfait system” for farmers whose business figure does not exceed 76.000 Euros. In this system, which is applied to approximately 60% of the group, the amount of tax is determined from the sum of an element calculated at the Department level as collective reference and an element derived from the characteristics of the producers, according to the land surface available, number of animals, etc. With respect to VAT, there is a special system for farmers with income of less than 45,700 Euros and which is applied to 25% of farmers who file. In this case, farmers pay the VAT on their purchases and receive a lump sum payment from the State for their sales. On the other hand, there is a preferential fuel tax for the use of diesel oil in agriculture.

In Germany, the types applied to income are the same as in other businesses, although there is a special deductible type for income on agriculture, when the gross income of married farmers does not exceed 61,400 Euros. Likewise, farmers may benefit from a lump sum benefit calculation method for those who develop less than 20 hectares, as well as other parameters for

livestock products or other activities, in general, less than 25,000 Euros of benefits. Thirty five per cent of the developments are in this situation. With respect to VAT, farmers sell their products at an increased lump sum price which starting in 1994, was set at 9%. There is also a reduced type for the use of diesel oil in the agricultural sector and a tax exemption for vehicles used in the development.

In the United Kingdom, the income tax system for farmers is the one generally applied to the rest of the activities. Bi-annual average calculations are allowed for reducing the impact of progressiveness when agricultural revenues are very variable. In the case of VAT, the applicable system is also the general one, although with zero rate applied to almost all sales, for which reason the farmer may recover the VAT paid for his purchases. There is also a reduced tax rate on the use of diesel oil for agriculture, as well as reductions in the annual rates of agricultural vehicles.

The tax system applicable to the agricultural sector in Spain began to be differentiated from the rest of the economic sectors in 1977, with the establishment of the constitutional period, whose coordinates were aimed at introducing modifications in the tax treatment of this sector, that would allow for adapting it to the reality of the sector and responding to the economic development needs of the entire primary sector. Nevertheless, the essential objective behind incorporating the sector to a specific tax system is to facilitate compliance with formal obligations by the taxpayers which, on many occasions are small or medium-sized family developments with scarce tradition with respect to documentation.

2. TAX SYSTEM OF AGRICULTURAL ACTIVITY IN SPAIN

2.1 Constitutional basis of the taxation of agriculture

It is the very article 130.1 of the Spanish Constitution which provides the basis for framing an individualized treatment for the agricultural sector on urging the public powers to “modernize and develop all the economic sectors and in particular, agriculture, cattle raising, fishing and crafts, in order to put all Spaniards in the same life level”. This constitutional recognition for special promotion of the primary sector is based on the active duty for encouraging the modernization and development of the sector and in a qualitative consequence which is to pursue the increased level of living of those who carry out their activity in this sector.

In any case, as has been stated in the White Book of Agriculture and Rural Development³, the tax discrimination that is being offered by the legislator to the agricultural sector is explicitly supported by a constitutional rule, which has led to the following normative milestones in Spain which are highlighted below:

- Act 49/1981, December 24, Agricultural Family Development and Young Farmers Statute.
- Act 19/1995, of July 4, on Modernization of Agricultural Development – hereinafter, MADA.
- Act 20/1990, of December 19, on tax system of cooperatives – hereinafter, TSCA, including the agricultural cooperatives within the system of “specially protected” cooperatives.

Likewise, every Autonomous Community has undertaken a normative development on this

subject with different tax measures to support the economic sector and related to taxes that involve the agricultural activity, especially the Tax on Net Worth Transfers and Documented Juridical Acts – hereinafter; TNWTDJA – the Estate and Gift Tax – hereinafter, EGT.

Such constitutional basis is reinforced by article 129.2 of the Spanish Constitution, which in addition to the duty of public powers of promoting “effectively the various forms of participation in the company” also calls for promoting cooperative companies”. The cooperatives corporate model represents an essential instrument of social economy, whose importance in the agricultural sector is fundamentally intensified, among others, for two reasons: 1) according to the regional influence of agricultural cooperatives in their commitment to the environment, to the extent there are no escape of developments to other territories, in spite of obtaining minimum profitability; and 2) undertaking the task of rendering agricultural cooperatives socio-culturally dynamic by providing professional training to their members and social values education in the rural world.

According to these premises, the tax’s “main objective of obtaining the necessary revenues for supporting public expenditures” may also “serve as general economic policy instruments and contribute to achieve the principles and objectives established in the Constitution” (art. 2.1.2nd paragraph). Therefore, along with the main function of every tax, which is to collect public revenues, it may also serve as technique for promoting the general economic policy. In any case, most taxes have a component or motivation which is not strictly fiscal. Tax figures have gone from a neutral institution exclusively

3. *White Book of Agriculture and Rural Development, Ministry of Agriculture, Fishing and Nourishment, Madrid. 2003. May be consulted at the web address: <http://www.libroblancoagricultura.com/publicacion/pdf/Cap01a10:T2.pdf>.*

devoted to collection, to an instrument that allows for achieving a whole series of objectives set by society.

However, it may happen that its use for nonfiscal purposes may lead to a denaturalization of the tax. An enforced net worth benefit ceases to be a “tax” benefit when its contributive or, more generically, collection essence is annulled or substituted by whatever nonfiscal purpose. The tax’s institutional guarantee requires that the nonfiscal purposes pursued with it, do not end up denaturalizing the typical function, which likewise characterizes this juridical principle, it being essential that there be minimum congruence between the mechanism selected and the function assigned to it.

Likewise, from the subvention side, the change of fiscal benefits into traditional taxes of a strictly collection nature has progressively flooded its juridical configuration in order to protect other constitutional purposes. Nevertheless, it must be warned that the redistributive and economic policy function entails the risk of “totally increasing the principle of contributive capacity as principle of equality”, if the legislator’s discretionality were taken to the extreme of having economic policy as the only reasonable element, which matter in the case of these assumptions, is based on the constitutional principle of special treatment of the agricultural sector.

On the other hand, the tax incentive, applied under any of the juridically possible modalities, implies an “encouragement which in relation to a specific behavior may result in the recognition of a tax benefit”⁴. Thus, the introduction of fiscal benefits to the tax burden of specific tax figures while a behavior prone to environmental protection is adopted, possibly bears with it a promotion, support or stimulus function that is

instrumental to the agricultural sector, but at the cost of a collection reduction that would be assumed by the citizens, and whose introduction should be undertaken cautiously. In principle, the tax measures approved which affect the agricultural sector, more than disencumbering techniques, constitute authentic tax benefits. Thus, the first ones are a pure reflection of the tax base determined by the legislator, in contrast to the tax benefits that constitute an exception to the regular tax system, a more favorable treatment for specific *de facto* assumptions, with principles of its own based on promotion functions⁵.

Therefore, there is a trend to limit the developments, since the adoption of juridical measures for supporting the sector goes through the need of protecting the active population, which it occupies in times of economic crisis with high rates of unemployment in the Western countries. In any case, the weaknesses of productivity of the agricultural sector continue to be found in the reduced dimension of the developments, as well as the well-known subjection to climate contingencies.

We thus propose the following as unavoidable challenges faced by this sector:

1. Increase in investments in the agricultural productive sector; 2) the search for competitiveness in prices and product innovation; 3) the configuration of tax instruments to stimulate the agricultural sector.

The tax treatment received by the agricultural sector can at no time be excluded from the economic relevance which it represents for the territory wherein it will be applied, since the economic source of such measures will be evaluated.

4. SOLER ROCH, M.T., *Incentivos a la inversión y justicia tributaria*, Civitas, Madrid, 1983, pág. 49.

5. FICHERA, F., *Le agevolazioni fiscali*, Cedam, Padova, 1992, pág. 56

Table 2
Spain: GDP by economic sectors (in %)*

Year	Agriculture and fishing	Industry and energy	Construction	Services
1970	11,0	34,0	8,8	46,3
1980	7,0	28,6	7,9	56,5
1990	5,5	25,1	8,8	60,6
2000	4,4	20,9	8,3	66,4
2005	3,1	18,4	11,6	66,8
2009	2,5	15,1	10,7	71,7
2010	2,7	15,6	10,1	71,6

* **Source:** Author's own preparation with data from INE National Accounting

Table 3
Spain: Structure of employment by economic sectors (%)*

Year	Agriculture and fishing	Industry and Energy	Construction	Services
1970	29,3	25,3	8,9	36,5
1980	18,6	27,2	9,3	44,9
1990	11,5	23,7	9,9	55
2000	6,6	20	11,2	62,3
2005	5,3	17,3	12,4	65
2009	4,2	14,4	9,7	71,7
2010	4,4	14,2	8,5	72,8

***Source:** Author's own preparation with data from INE's Active Population Survey

2.2 Tax and financial effect on the agricultural sector

First of all, it is necessary to make a terminological clarification since, generally, taxation of the agricultural sector comprises three fundamental activities of the primary sector (agriculture, cattle raising and fishing). Although the tax rules applicable to these economic activities have a specific regulation, they do not include forest activities—in keeping with the scope of application

of the community regulations. However, it must be pointed out that taxation of the agricultural sector is not identical for farming and cattle raising activities, since there are significant differences in specific cattle raising activities.

The following chart illustrates the tax and financial effect on the agricultural sector on which we will provide a brief overview, to subsequently consider in greater detail the contents of the agricultural activity's tax system.

Table 4

State taxes	Autonomous taxes	Subsidies and public aid
Individual Income tax • Objective estimation system	Tax on Net Worth Transfers and Documented Juridical Acts	Community Agricultural Policy
Value Added Tax • Special system	Estate and Gift Tax	
Corporate Tax • Cooperatives • Agricultural Transformation Corporations		
*Self-prepared by author		

As may be seen, IIT and VAT are taxes which afford the agricultural activity a differentiated system and constitute a specialty with respect to each of their general system. In addition, if the agricultural activity is organized in different corporate forms such as cooperatives, in particular, the corporate benefits resulting from the agricultural activity may also take advantage of a “specially protected” Corporate Tax-CT system. In subsequent sections, we will discuss the main elements of the fiscal effect on these taxes.

From the standpoint of other transactions related to the agricultural business, we will refer to its transfer, where we will find specific rules applicable to TNWTDJA (onerous transfer) as well as to EGT (free transfer).

Thus, since the beginning of an agricultural activity, the mere acquisition of an agricultural development in its totality and provided that the buyer continues to exercise the same entrepreneurial activity of the transmitter (art. 7.1a)) it is not subject to VAT by exception to the general rule of subjection to this tax of all transactions carried out by businessmen and professionals. It must be pointed out that this non-subjection to VAT calls for the transfer of the totality of the seller’s entrepreneurial net worth and the purchaser thereof must be a single person, corporation or entity and the latter must continue the same activity of the transferor. If any of these requirements were not fulfilled, the transaction will be subject to VAT. On the other hand, the purchase-sale of the totality of the agricultural development will also not be subject to TNWTDJA in accordance with article 7.5 of the TRLITPAJD.

Now then, the TNWTDJA provides for certain exemptions that are related to the agricultural sector. This is the case of the plot concentration, the forced exchange of rural farms; the voluntary

exchanges authorized by the Agricultural Reform and Development Institute, etc., in order that the fiscal cost will not be an obstacle to its fulfillment⁶.

However, it was the MADA which introduced a significant part of the differentiated tax treatment in this tax. Thus, the MADA provided for the exemption of the DJA tax on the first copies of the articles of incorporation, modification or cancellation of mortgage loans subject to VAT, when these are granted to holders of priority developments for improvement plans and holders of developments which, although not being priority, might reach such consideration through acquisitions financed with the loans. Likewise, the transfer or acquisition in any capacity, onerous or lucrative, inter vivos or mortis causa, of fee simple or usufruct granted for life of an agricultural development in its integrity, in favor or by the holder of another development that may be a priority or which may achieve this consideration as a result of the acquisition, will enjoy a 90% reduction of the base of the tax encumbering the transfer of acquisition of the development, provided that the priority condition of the purchaser’s development is not changed, with the reduction being increased to 100% if the surviving spouse continues the development. On the other hand, article 20 of the MADA provides that the transfer or acquisition will be exempt in the case of a young farmer or an agricultural wage earner for his initial installation in a primary development, while the general reduction will be increased by 10 percentage points if the purchaser is a young farmer or agricultural wage earner and the transfer or acquisition is made during the 5 years following its initial installation.

In addition, if the crop has been classified by the respective Autonomous Community as a “priority agricultural development”, it will be entitled to the application of tax benefits, according to economic

6. MARTÍN FERNÁNDEZ, F.J., RODRÍGUEZ MÁRQUEZ, J., *La fiscalidad en el sector agrario*, Instituto de Estudios Económicos, Madrid, 2004, pág. 50.

parameters and requisites, number of agricultural workers employed, income of reference and viability of the agricultural development. Using the example of the Castilla-La Mancha region, Law 9/2008, of December 4, regarding measures on assigned taxes, provides in its article 13 deductions on onerous transfers of agricultural developments subject to TNWTDJA:

- A 100% deduction of the TNWTDJA rate is established for transactions referred to in articles 9, 10, 11 and 13 of Act 19/1995, of July 4, regarding the Modernization of Agricultural Developments, provided that the requisites established in the aforementioned law are fulfilled.
- Taxable events related to the agricultural developments of a unique nature defined in article 4 of Act 4/2004, of May 18, on Agricultural and Rural Development in Castilla-La Mancha will have 50% deduction of the fee.
- The taxable events provided in article 10.1 of this Law, related to the preferential agricultural developments defined by article 5 of the Law on Agricultural and Rural Development in Castilla-La Mancha. The deduction of the tax rate will be 10 per cent.

Another way of acquiring ownership of an agricultural development is through free transaction *inter vivos*; that is, through its donation, in which case the acquisition will be subject to the Donations Tax, regulated by Act 29/1987, of December 18 of the Estate and Gift Tax. On the other hand, article 20 of the Law provides for a tax base reduction of 95% of the value of an individual enterprise, professional business or participations in enterprises or rights of enjoyment thereof, on fulfilling the legal requirements, unless the pertinent Autonomous Community may determine otherwise. Just as in the case of the TNWTDJA, the EGT is an assigned tax and therefore, the Autonomous Communities have the power for determining tax benefits in this respect, and in fact, a good number of them have done so.

Lastly, agricultural subsidies originating from the Community Agricultural Policy (CAP) are very important as financial instrument of the agricultural activity; however, we will not consider this issue in greater depth, since it is a direct support mechanism –not an indirect one, such as taxes which is the subject of our analysis. Nevertheless, it may be said that successive CAP reforms have been aimed at structuring a sustainable agricultural model through a complex juridical system that takes into account the agricultural activity, according to its ecological implications. Likewise, the announced CAP reform –intended to enter into force in 2014- would seem to be oriented toward conditioning 40% of the agricultural aid to the environmental factor.

2.3. Special agricultural system: IIT and VAT

In general, the agricultural and fishing sectors are subject to a special system essentially involving IIT and VAT – hereinafter, AGFSP. Above all, this system is aimed at reducing formal obligations, to thus incorporate to the tax system the largest possible number of agricultural developments, including the most numerous small and medium-sized ones.

The differentiating element with respect to IIT in agriculture involves the objective estimation of income as a percentage of the value of production, specifically for each product. This method is incompatible with the direct estimation system and its relinquishment leads to the relinquishment of the special VAT system.

With respect to VAT, article 124 of the VATL allows for applying to holders of agricultural, forest, cattle raising or fishing developments the exemption from formal and material obligations of the general system. This system implies that, given the inability to deduct the VAT incurred, the farmers abiding by the system will be given a lump-sum compensation for VAT payments incurred or paid for goods acquired or services rendered.

Recently, the latest regulatory changes due to increase in the VAT rates, provided in Royal Decree-Law 12/2012, have affected agricultural food products, while also including an increase in VAT compensation (article 130, par. 5) starting in September 2012⁷. Thus, although the cost of production is increased due to the increase of the VAT rate, it is compensated with the VAT which the taxpayers may apply. Nevertheless, the claims of the sector have not been considered, given that there is a distinction between the agricultural and cattle raising activities, of which the latter has a lower compensation VAT⁸.

A characteristic of this special system is thus its great simplicity, in a clear attempt at adapting the tax to the reality of a sector, such as the agricultural one which is less prepared to comply with the demands of the general tax system. Therefore, the reasons justifying this system are: 1) the nonexistence in the agricultural sector of the necessary administrative organization for fully applying the tax, an issue considered in the Guideline that allows for granting the agricultural producers a lump sum system that tends to compensate the tax burden paid for the acquisition of goods and services by farmers subjected to the lump-sum system, and 2) a technical reason based on the very operation of the tax, whereby the compensation system for the tax burden borne from the acquisitions or services received by the farmers, allows that the compensations be deducted from the fees incurred for the transactions carried out⁹.

IIT: Special system

The purpose of the IIT objective estimation system (article 31 of the IITL and article 32 of the IITR), is aimed at assessing the net yield, exclusively, of entrepreneurial activities that are subjected to it, generally small businesses. These net yields are assessed through indexes, signs or modules that result from the statistical analyses and studies on yields from entrepreneurial activities included in the system that have been carried out by the Ministry of Economy and Finance.

Accordingly, the resulting net yield has nothing to do with the actual results of the different entrepreneurial activities included in the system. This is so, to the extent that the profits that could have been obtained as a result of the existing differences between the actual yields and those derived from the modules, can never be subject to the tax and are thus exempt from taxation.

In keeping with this objective, formal obligations of the entrepreneurs included in the system have been reduced to the necessary minimum for applying the few controls which the very system specifies. Likewise, article 101.5, paragraph d) of the IITL provides a 2% withholding on yields resulting from the activities, in the case of yields originating from agricultural or cattle raising activities –except for pig raising and poultry farming activities wherein 1% will be applied – which implies a very reduced advance of the

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7. *The regulatory modification has included, as said, a generalized increase as of September 2012 which has been applied by means of two measures: first, an increase in rates, general and reduced (from 18% to 21% and from 8% to 10%, respectively), while the over-reduced rate continues unchanged (4%); second, a group of specific products and services which until now were taxed at the reduced rate, will not be taxed at the general rate. Specifically, the VAT increase in agricultural products has not affected basic food products (bread, flour; milk, cheese, eggs, fruits, vegetables, potato and cereals) which continue to be applied the 4% rate. The rest of foods (meat, oils and transformed products), phytosanitary products, seeds, fodder, veterinary services, water, and services rendered to holders of agricultural, forest or cattle raising developments (planting, sowing, fertilization, tilling, etc.) increase from 8% to 10% and the means of production of farmers and cattle raisers (energy, fuel and agricultural machinery) are taxed at 21%, instead of 18%.*
 8. *Thus, while in cattle raising the compensation goes from 8.5% to 10.5%, in the agricultural sector the rate applied goes from 10% to 12%.*
 9. *ROMERO GARCÍA, F., “El IVA y la actividad agraria. Régimen especial de la agricultura, ganadería y pesca” en La fiscalidad de la agricultura y la ganadería, CISS, Madrid, 2007, págs. 172-173.*

payment than for other activities subjected to the objective estimation system¹⁰.

On its part, the simplified VAT system (art. 122 of VATL and 34 of VATR), as well as that of the IIT objective estimation has been considered as a system for the objective estimation of the Tax payments, for small businesses as well, with the same characteristic of reduction to the minimum expression of formal obligations of the entrepreneurs, whose activity is included therein. In accordance therewith, Resolution DGT nº 2551/2005, of December 22, it was stated that the VAT simplified system is a special system that consists of the objective estimation of payments for current transactions, with deduction of payments actually made or to be paid in exercising the activity. Therefore, the payments made for such current transactions are not the ones which the taxpayer has actually paid on his transactions, but rather are calculated on the basis of modules according to the activity involved.

The aforementioned increase in tax rates has caused that Order HAP/2259/2012 of October 22, include the review of the modules of the simplified system in order to update its amount accordingly. With respect to IIT, the number of modules, the net yield indexes of agricultural and cattle raising activities and application instructions are maintained. The 5% reduction of the net yield of modules derived from the agreements reached in the Autonomous Working Table is also maintained. It is worth noting that the special system has become more attractive following the incorporation of six additional provisions by means of this Order.

In the first one, in order to promote the hiring of workers without this implying a greater fiscal cost, in relation to the IIT objective estimation system, it is provided that, if in 2012 there would

have been an increase in the “wage earning” module, compared to 2011, the zero coefficient will be applied to said positive difference. In the second it is provided that taxpayers beginning their activity in 2012 and determining their net yield through the objective estimation system, they will reduce said yield in the period when the activity was initiated and in the subsequent one by 60 and 30 %, respectively. The reduction will be 70% in both periods in the case of disabled taxpayers, with a level of disability equal to or above 33%. Interesting for the production of agricultural foods is the third Additional Provision of the abovementioned Order which determines the application of the 0.173 index for 2012 to agricultural activities involving tomato, broccoli, peach and asparagus intended for industry and which determine their net yield through the objective estimation system. The fourth one covers a general reduction for 2011 of 5% applicable to the calculation of the net yield through the objective estimation system in all economic activities compiled in annexes I and II of the Jurisdictional Order 13/2011, of February 8. The fifth provides for modifying for the year 2011, in relation to the objective estimation system, the indexes of specific agricultural and cattle raising activities that are undergoing special economic difficulties. Finally, the sixth reduces for the year 2011, specific signs, indexes or modules applicable to the transportation of goods by road.

There are certain limiting quantitative criteria when it comes to applying the corresponding module, in such a way that the magnitude applicable to the series of activities shall be in keeping with articles 31 and 32 of the IITL and article 122 of the VATL:

a. 450,000 Euros of annual revenues for the series of economic activities. The following will be calculated: 1) The transactions that must be registered in the sales and revenues registry

10. *The application of limits to the objective estimation method for agricultural and cattle raising activities has not changed following modifications thereto (art. 31 of the IITL) through Law 7/2012, of October 29 regarding the modification of tax and budgetary regulations and adaptation of the financial regulations for intensifying actions in preventing and combatting fraud.*

(art. 68.7 ITR) or in the registry provided for such purpose (art. 40.1 VATR); 2) Likewise, transactions not previously calculated will be included; that is, those for which the entrepreneurs are obliged to issue and maintain invoices, according to the provisions of the invoicing Regulations, article 2, except for transactions comprises in article 121.3 of the VATL, as well as real estate leases that do not qualify a yields from economic activity.

b. 300,000 Euros of revenues from the following activities: Independent cattle raising; cattle breeding, care and fattening services; other works, services and accessory activities carried out by farmers or stockbreeders which are excluded or not included in the special VAT agricultural, cattle-raising and fishing system; other works, services and accessory activities carried out by incumbents of forestry activities which are excluded or not included in the special VAT agricultural, cattle-raising and fishing system. Also, products that correspond to the assignor in agricultural activities carried out under the partnership system; products that correspond to the assignor in forestry activities carried out under the partnership system; agricultural or cattle raising business susceptible of being included in the special VAT agricultural, cattle raising and fishing system; Forestry business susceptible of being included in the special VAT agricultural, cattle raising and fishing system; processes involving the transformation, elaboration or manufacture of natural, vegetable or animal products that need to be registered in the section corresponding to industrial activities in the IAE Rates and which may be carried out by the incumbents of the developments from which such natural products are directly obtained.

When dealing with entities under the income attribution system one must calculate not only the transactions corresponding to the economic activities carried out by the very entity under the attribution system, but also those carried out by the partners, heirs, joint owners or participants; the spouses, their ancestors and descendants; as well as other entities in the income attribution

system wherein any of the aforementioned persons responding to the aforementioned circumstances may participate.

Also included is the ecological crop condition for determining the net yield of the modules, provided that the production may fulfill the requisites established in the legal regulations of the Autonomous Communities, for which reason they assume the control of this type of production according to RD 1852/1993 of October 22 and Regulations (EEC) 2092/91 of the Council of June 24, 1991 to which a correcting index of 0.95 will be applied.

VAT: Special system

The special agriculture, cattle raising and fishing system –SACFS- was designed for simplifying management by the Tax Administration, which results in a decrease of the corresponding costs and, in turn, a reduction of taxpayer formal obligations, whose essential characteristic is the absolute lack of compliance with said obligations.

At the same time, this system endeavors to achieve compliance with the principle of justice, allowing compensation through a specific mechanism so that the taxpayers may recover the tax borne in the acquisition of goods and services. This is a voluntary system which, nevertheless is directly applied when the requisites established by the VATL are fulfilled, except for express waiver by the taxpayers in the manner and terms provided in article 33 of the VATR. The waiver will be in effect for a minimum three-year period and will be considered extended for each of the subsequent years in which the respective special system could be applicable, unless it is expressly revoked in the month of December prior to the beginning of the year when it should be in effect.

Both systems –IIT and VAT – are coordinated, and thus the waiver of one of them implies the waiver of the other, and its exclusion implies the exclusion of the IIT objective estimation system. The system is applied to the incumbents of

agricultural, forest, cattle raising or fishing developments, provided they fulfill the legal requirements and would not have filed a waiver within the regulatory term therefor (art. 124 VATL). Nevertheless, the taxpayers may be excluded from the SACFS according to the volume of transactions (art. 124 Dos.6 VATL and art. 43.2 VATR), that is, if they exceed:

- a. 300,000 Euros during the immediately preceding year, for the series of transactions relative to activities comprised therein, unless the IIT regulations would establish another figure for purposes of the application of the objective estimation system in determining the yield from agricultural, forest, cattle raising or fishing activities, in which case the latter will be considered.
- b. 450,000 Euros during the immediately preceding year, for total transactions carried out during said period.
- c. The taxpayers which may have exceeded in the immediately preceding year the amount of 300,000 Euros annually, excluding VAT, for acquisitions or imports of goods and services for all the entrepreneurial or professional activities of the taxpayer, excluding those relative to elements of the immobilized.

This system will be applicable to agricultural, forest, cattle raising and fishing developments fulfilling the following conditions (art. 125 VATL and art. 44 VATR):

- a. That their products be obtained directly from crops, developments or captures, which implies that intermediate activities are not admissible for obtaining them.
- b. That natural, vegetable or animal products be obtained, not subjecting them, therefore, to any type of transformation.
- c. That products are obtained for transfer to third parties, as well as to accessory services to such developments to which the VATL refers.

As we have said, the important advantages of this special system are in the simplification of the

material and formal obligations of the taxpayers which, in turn, facilitate tax management by the Administration and compliance with the tax by the taxpayers subject to this system (art. 129 VATL and art. 47 VATR). In sum, taxpayers abiding by this system are not subjected to: 1. The obligation to assess, cause effects or pay the tax; 2. the obligation to file self-assessments; 3. The obligation to make the tax payment; 4. The obligation to demand the equivalence surcharge, as appropriate; 5. The obligation to issue or deliver invoices; 6. The obligations to keep accounting or specific records, except for keeping an appropriate registry for entering transactions comprised in the special system. However, this release of obligations does not exist in the following assumptions:

- Imports of goods;
- Intra-community acquisitions of goods;
- Transactions involving the delivery of real property investments;
- The taxpayer's presumed investments.

In any case, the taxpayers abiding by this special system must fulfill the general obligations of any taxpayer, such as enrolling in the census, requesting the corresponding TIN and, if they carry out other different activities, likewise the obligations legally established with respect to them.

On the other hand, and in direct correlation with the inability that the taxpayers abiding by this special system deduct the payments borne or made for the acquisitions or imports of goods of any nature or for the services which may have been rendered to them, provided that they are used in carrying out the activities to which the special system is applicable and in order not to affect the taxpayers subject to this system, the compensations system is established (art. 130. One VATL).

In spite of the VAT substitutive mechanism which does not have an effect on the farmer who must comply with the compensation system, its differences with the VAT effect are significant.

Thus, the resulting VAT is collected by the entrepreneurs and goes to the Public Treasury, while the amount of compensations goes to the farmer who makes no VAT assessment (or payment). On the other hand, the base used for applying the compensation percentage does not exactly coincide with the VAT tax base because, since the base considered for calculating the compensation is the selling price of the agricultural products, it does not include accessory expenses that are charged separately to the purchaser (packing, commissions, charges, transportation, insurance,...) which, on the other hand, are part of the tax base for VAT purposes in the general system. Lastly, it is worth noting that the percentages applied to the selling price of products delivered by the farmer for the calculation of the compensation, do not coincide with the VAT rates, with the community regulation stating in this respect that the lump-sum percentages will be determined in accordance with the macroeconomic data of the of the agricultural group subjected to the special system in the past three years, with the express prohibition that farmers examined jointly receive compensations that exceed the VAT burden.

As a result of the application of this special agricultural system, the farmer is not the one obliged to transfer the compensation to the purchaser, but rather the purchaser is the one obliged to compensate the farmer, for which reason the issuance of the invoice indicating the compensation made does not correspond to the farmer, but rather to the purchaser of his products.

Thus, according to the compensation system the entrepreneurs abiding by this special system have the right to a lump-sum compensation for the VAT payments incurred or paid for the acquisitions or imports of goods or services that may have been rendered to them, to the extent they use those goods or services in carrying out the activities to which this special system is applicable.

As for the transactions that allow for receiving the compensation, art. 130 Three VATL states:

1. The deliveries of natural products obtained from agricultural, forest, cattle raising or fishing developments to other entrepreneurs or professionals, regardless of the territory where they are established with the following exceptions:
 - Those made to entrepreneurs that abide by this same special system in the territory of application of VAT and which use the aforementioned products in carrying out the activities to which said special system are applied. That is, the compensation must be paid when those receiving the products are not abiding by this special system.
 - Those made to entrepreneurs and professionals who in the territory of VAT application exclusively carry out tax exempt transactions, which do not allow for its deduction.
2. Exempt intra-community deliveries of natural products obtained in said developments, when the purchaser is a juridical person not acting as an entrepreneur or professional and the intra-community acquisitions made are subjected in the member State of destination.
3. The rendering of accessory services to the agricultural, forest, cattle raising or fishing activity, regardless of the territory where those receiving them are established and provided that the latter are not abiding by this same special system as regards the special tax sphere.

There is no right to the compensation when the taxpayers abiding by this special system, in carrying out their activities, make deliveries or exports of natural products to those who do not abide by this special system. This, without detriment to its right to the deductions provided in the general system (art. 130 Four VATL).

With respect to calculation of the amount of compensation, the latter is the amount resulting from the application of the percentage provided by the VATL, to the selling price of products or accessory services rendered to third parties (art. 130 Five VATL). In determining the selling price, indirect taxes encumbering the aforementioned transactions will not be taken into account, nor the accessory or complementary expenses thereto, that have been charged separately to the purchaser, such as commissions, packing, charges, transportation, insurance, financial expenses or others. In transactions carried out without monetary compensation, the aforementioned percentages will be applied to the market value of products delivered or services rendered. In Resolution DGT No. 2394/2008, of October 26 it was stated that the compensation of the special agriculture, cattle raising and fishing system to be paid by a cooperative for the deliveries of grapes made by its partners, will be the result of applying the corresponding percentage to the price of deliveries of grapes received by its associates, regardless of the criterion (fixed and variable expenses) taken into consideration for calculating said price.

As has been previously mentioned, as of September 1st, 2012, there have been some modifications to article 23 of Royal Decree-law 20/2012 of July 13, regarding measures for guaranteeing the budgetary stability and promotion of competitiveness, through a new drafting of section 5 of article 130 VATL, it being that from now on, the lump sum compensation will be the amount resulting from applying, to the selling price of the products and services subjected to the aforementioned special regime, the appropriate percentage from among those indicated below:

- Twelve per cent (10% until August 31, 2012), in deliveries of national products obtained in agricultural or forest developments and in services of an accessory nature to said developments;
- Ten per cent (8.5% until August 31, 2012), in deliveries of national products obtained in

cattle raising and fishing developments and in services of an accessory nature to those developments.

In determining the aforementioned prices, indirect taxes encumbering the aforementioned transactions will not be taken into account, nor the accessory or complementary expenses thereto that have been charged separately to the purchaser, such as commissions, packing, charges, transportation, insurance, financial or others.

Finally, taxpayers who have paid the compensations may deduct their amount from the fees earned for the transactions carried out, applying to this effect, the rules established by VAT with respect to deductible fees earned (art. 134.1 VATL and art. 49 VATR). Taxpayers, to whom the special system of equivalent surcharge in relation to acquisitions of natural products intended for their commercialization according to such special system, cannot deduct the compensations, and likewise they cannot deduct in any case the VAT borne on their acquisitions (art. 134.Two VATL). To make the deduction it is required as documentary requisite that taxpayers have the original receipt (art. 134. Three VATL and. 49 VATR).

2.4. The corporate tax system of agricultural cooperatives

According to Law 27/1999, on Cooperatives, a cooperative is a corporation established by persons who join with others in a free adherence and voluntary drop out system, for carrying out entrepreneurial activities intended to satisfy their needs and economic and social aspirations, with a democratic structure and operation. These cooperative organizations considered under article 7.1^a of the Revised Text of the Corporate Tax Law (CTLRT) have a special tax system regulated by Law 20/1990 -CTSL. In principle, agricultural cooperatives enjoy a specially protected system in view of their social purpose and the tax benefits of article 33 and 34 of the CTSL are applied to them.

It is for this reason that compliance with the requirements of the protected cooperatives¹¹ is subjected to such strict control. In this respect, article 38 of the CTSL was updated recently, stating that the tax Administration is in charge of verifying the necessary circumstances or requisites for enjoying the tax benefits provided in the Law and undertaking the corresponding regularization of the cooperative's tax situation. Likewise, "the result of said actions will be informed to interested Local Corporations and Autonomous Communities to the extent it may have an effect on the taxes they manage"¹².

The tax system of agricultural cooperatives affords a more advantageous tax treatment to

cooperative results that are understood to be those listed in article 17 of the CTSL, and which are part of the tax base of the CT, together with extra-cooperative yields and net worth increases and reductions. Thus, tax benefits applicable to agricultural cooperatives are specified in the type of encumbrance applicable to the tax base of the cooperative results which will be 20%, vis-a-vis the general rate that will be applied to the extra-cooperative results. Also regulated is an assumption of freedom of reduction of the elements of new fixed asset, acquired within a term of three years as of the date of its incorporation in the registry of cooperatives and a 50% bonus of the integral CT fee, according to the CTSL, since these are specially protected cooperatives.

3. CONCLUSIONS

As compared to other economic sectors where public intervention finds a generic basis in the Constitution, the agricultural sector allows a public promotion activity that justifies the adoption of more beneficial fiscal measures and this, as well, considered from the tax standpoint. This viewpoint

must be put into practice, according to sound judgment required for more effectively collecting in times of crisis, but also with the conviction that favoring the sector may bring tax resources through increased productivity and the exchange of agricultural products.

On the other hand, it is important that when introducing tax measures in the agricultural sector, the regions be allowed to pay specific attention to certain types of crops or activities that may be more appropriate for each geographical region of the country, in order that it may develop its tax autonomy.

Likewise the parameters of legislative action must bear in mind that the design of the tax system of the agricultural sector must be aimed at promoting the structural transformation and not at solving occasional issues, since it must not be forgotten that the yield from production

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11. *Such requisites on the Cooperatives Law have been criticized by ALGUACIL MARI, P., ROMERO CIVERA, A., stating that "although the system is classified as 'protective', it actually does not protect, but rather carries out a series of technical adjustments, especially in the Corporate Tax of cooperatives. On the other hand, it does not offer true 'incentives' in the aforementioned tax either. It would seem more logical that these 'technical adjustment' measures would be gathered in a system of adaptation of Cooperatives to a tax intended for 'capital' corporations under the name of 'special system', in "Requisites for the application of the special cooperatives tax system", Quincena Fiscal Aranzadi No. 21/2011, BIB 2011/1750.*
12. *Final 2nd Provision of Law 7/2012 of October 29 on the modification of the tax and budgetary regulations and adaptation of the financial regulations for intensifying actions in the prevention and struggle against fraud.*

of agricultural developments is framed within a context of open markets, thus calling for facing the economic demands thereof. To this end, a key element is the modernization of agricultural developments, where direct taxation (IIT and CT) may play a relevant role with special emphasis on the diversification of activities according to social demands –connected through environmental protection – and tax stimulus to rural tourism or agro-tourism.

Undoubtedly, in the Spanish case, the treatment given the sector with respect to VAT is the one that may be considered specially generous, not only by facilitating compliance with formal obligations, but also substantially, since even in the current economic crisis situation, the legislator has especially protected the agricultural sector –by accepting the requests of the Autonomous Communities and the main agricultural organizations – an attempting to

mitigate the effects of the increase in tax rates that affect agricultural food products with the increase of the lump sum compensatory VAT for the tax cost borne by the products and services acquired by the farmers and cattle raisers. Nevertheless, there is still a difference in tax treatment that has not been sufficiently justified.

It is also believed that the vulnerability of the sector may allow for rendering flexible the taxation of complementary activities such as crafts, or consider the actual participation of different members of the family that are regularly involved in the yield from small developments. The tax importance of the more beneficial tax system for cooperatives may result in greater disadvantages in relation to the juridical system established for them, which issue may be considered an added difficulty in situations of transformation, dissolution or termination ¹³.

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13. It has thus been stated by MARTÍN FERNÁNDEZ, F.J. and RODRÍGUEZ MÁRQUEZ, J., on indicating the differences in treatment in such situations of the cooperatives with respect to commercial corporations, “El régimen tributario de la agricultura en España”, en La fiscalidad en el sector agrario, Instituto de Estudios Económicos, Madrid, 2004, p. 41.