

COUNCIL OF MINISTERS

**Decree-Law No. 23/VI/2003
Of 14 July 2003**

Approves the ICE Regulation

By mandate of the People, under the terms of subparagraph b) of Article 174 of the Constitution, the National Assembly decrees the following:

**Article 1
Approval**

The Regime of Infractions relative to the Value Added Tax and the Special Consumption Tax, as well as the infractions to the respective regulations, which are integral part of this legislation, is hereby approved.

**Article 2
Procedures for Infractions Committed
During the First Year VAT is in Effect**

1. The preparation of the notification report for the infractions foreseen in this Law during the first year of application of the Value Added Tax, in all that does not pertain to taxation on importation, requires prior authorization from the General Director of Contributions and Taxation, who shall grant the authorization in a duly fundamented

**Regime of the Infractions Relative to
the Value Added Tax and the
Tax on Special Consumptions**

**CHAPTER I
General Provisions**

**Article 1
Infractions and Penalties**

This legislation defines the infractions and the penalties relative to the Value Added Tax and the Tax on Special Consumption.

**CHAPTER II
Infractions Pertaining to the Value Added Tax**

**SECTION I
Types of Fiscal Infractions and Remissions**

**Article 2
Fiscal Crimes and Fiscal Transgressions**

1. The fiscal infractions to the Value Added Tax are divided into crimes and fiscal transgressions.
2. Violation to the provisions of Articles 113 and 115 of the General Tax Code, on the matter of the Value Added Tax, is punishable with a sanction foreseen for the crimes of fiscal credit "*frustration*" and violation of fiscal secrecy, respectively, under the terms of the cited Code.
3. The action of the organs, members or representatives of the collective persons that are passive subjects of the Value Added Tax is punishable with the sanction foreseen in Article 95 of the General Tax Code.
4. The sanction to the infractions to VAT that take place in the importation of goods shall be processed by the customs authority under the terms of the law of customs fiscal infractions.

SECTION II
Fiscal Crimes

Article 3
Fiscal Fraud

1. Whosoever,
 - a) Omits the processing, the surrender of invoice or equivalent document or of the corresponding liquidation of the tax, under the terms foreseen in the Value Added Tax Regulation;
 - b) Falsifies the written elements or documents required by the Value Added Tax regarding the nature of the operation that determines subjection to the tax, of the price applied or agreed to or over the amount, the nature, type, quality model or any other elements of identification of the transmitted goods or of the services rendered,

with the intention of obtaining undue patrimonial advantage for him/herself or for someone else commits the fiscal fraud crime foreseen in Article 111 of the General Tax Code.

2. The following are comparable to the provisions of No. 1:
 - a) The inexistence or not keeping the books or the entries required by the Value Added Tax Regulation with a view to the payment and oversight of the tax;
 - b) The refusal to show the books, entries, invoices and other documents required by the Value Added Tax Regulation, as well as the hiding, destruction, defacing, falsification or alteration of the same;
 - c) Omission of any amount of tax in favor of the State in the periodic declarations, even if a tax credit results from them.

Article 4
Fiscal Abuse of Trust

Whosoever, having received tax liquidated by a client, does not take that tax into account in the payment of the taxes, commits the crime of abuse of trust foreseen in Article 112 of the General Tax Code.

SECTION III

3. The delivery or showing of the bookkeeping and accounting records and of fiscally relevant documents are considered to have been refused when they are not placed at the disposal of the competent functionaries free access and utilization of the locations subject to fiscal oversight, under the terms of the law, is denied to the competent functionaries.

4. For the purpose of the preceding numbers, the books, computerized documents and information, indispensable for the determination and oversight of the passive subject's tax situation, are considered fiscally relevant documents.

5. The directors, administrators, managers, members of the fiscal council, liquidataries, administrators of the bankrupt mass, accountants and bookkeepers or others who are responsible are, jointly with the passive subject, responsible for the infractions foreseen in this Article, without prejudice for the criminal proceedings applicable to this case.

Article 7 Falsification, Corruption and Alteration Of the Fiscally Relevant Documents

1. Whosoever, fraudulently falsifies, corrupts, hides, destroys or damages fiscally relevant elements, when not punishable for the crime of fiscal fraud, shall be punished with a fine that varies between ecv100,000\$00 (one hundred thousand escudos) and triple the tax that was not liquidated, up to ecv 500,000\$00 (five hundred thousand escudos).

2. Should there be no tax to be liquidated, the limits of the fines foreseen in the preceding number shall be reduced by half.

Article 8 Violation of Fiscal Secrecy

1. Revealing or taking advantage of fiscal secrecy one has knowledge of in the exercise of the respective functions or because of them, shall be punished with a fine that varies between ecv 50,000\$00 (Fifty thousand escudos) and ecv 500,000\$00 (five hundred escudos), without prejudice for the criminal proceedings applicable to the case.

2. Negligence shall be punished.

Article 9 Non-organization of Accounting or Bookkeeping in Harmony With the Legal Requirements, and Delays in Their Execution

1. Not organizing accounting in accordance with the requirements of the Value Added tax Regulation, as well as the delay in its execution, in the bookkeeping and in the

elaboration of other written documents or of records, for periods greater than that legally required, when they should not be punished as crime or as a graver transaction,

Article 12
Non-filing or Delay in Filing or Showing
Documents or Other Declarations

1. Non-filing or delay in filing or showing, immediately or within the deadline established by law or by the tax administration, of declarations or documental proof of facts, amounts or situations contained in declarations, notifications, orders, records, even if magnetic, or other documents and not providing information or clarifications that must be legally or administratively required, are punishable with fines that may vary from ecv5,000\$00 (five thousand escudos) to 200,000\$00 (two hundred thousand escudos).
2. Not filing or filing outside the legal deadline of start-up declarations, alteration or cessation of activity shall be punishable with a fine that varies between ecv 5,000\$00 (five thousand escudos) to ecv 100,000\$00 (one hundred thousand escudos).

Article 13
Omissions and Inexactness in the Declarations
or in Other Fiscally Relevant Documents

1. The omissions or inexactnesses relative to the tax situation that do not constitute fiscal fraud nor the transgression foreseen in Article 7, as well as the documental proof of the facts, amounts or situations contained in them, including those applied in the accounting and bookkeeping documents or in other fiscally relevant documents that must be kept or shown, shall be punished with a fine that may vary between ecv 5,000\$00 (five thousand escudos) and ecv 200,000\$00 (two hundred thousand escudos).
2. Should there be no tax to be liquidated, the limits of the fines foreseen in the preceding number shall be reduced to half.
3. For the purposes of number 1, the declarations referred to in Articles 9 and 10 of this legislation shall be considered.
4. In the case of passive subjects of the simplified regime the fines foreseen in this Article shall vary between ecv 1,000\$00 (one thousand escudos) and ecv 20,000\$00 (twenty thousand escudos)

Article 14
Non-emission or Emission out of Date
Of Invoices or Equivalent Documents

1. Non-emission or emission out of date of invoices, receipts or equivalent documents, when they should not be punished as fiscal fraud or more serious offense, shall be

2. Non-observance by the tax exempt passive subjects and by those subject to the simplified tax regime of the provisions of Articles 50 and 56 of the Value Added Tax Regulation shall be punished with a fine varying from ecv 1,000\$00 (one thousand escudos) and ecv 20,000\$00 (twenty thousand escudos) and with a fine varying from ecv 5,000\$00 (five thousand escudos) and ecv 50,000\$00 (fifty thousand escudos), respectively.

Article 15
Non-filing, Before the Respective Utilization,
Of the Bookkeeping Records

1. Non-filing, in the legally established deadline, and before the respective utilization, of accounting books, when they are legally required, shall be punished with a fine that varies from ecv 5,000\$00 (five thousand escudos) and ecv 100,000\$00 (one hundred thousand escudos).

2. Non-conservation, for the period legally established in the fiscal law, of the books referred to in the preceding number and of all the fiscally relevant documents shall be punishable with a fine that varies from ecv 100,000\$00 (One hundred thousand escudos) and ecv 2,000,000\$00 (two million escudos).

Article 16
Printing of Documents by Non-Authorized Printing Offices

1. Printing of invoices or equivalent documents by persons or entities not authorized for that purpose, whenever the law so requires, shall be punished with a fine that varies between ecv 100,000\$00 (one hundred thousand escudos) and 5,000,000\$00 (five million escudos).

2. The provisionment of the invoices or equivalent documents referred to in the preceding number, by duly authorized entities but without observance of the legally required formalities, as well as their acquisition, shall be punished with a fine that shall vary between ecv 50,000\$00 (fifty thousand escudos) and ecv 2,000,000\$00 (two million escudos).

Article 17
Non-collaboration and other Infractions

The non-collaboration foreseen in Articles 68 to 70 of the Value Added Tax Regulation shall be punished with a fine that varies between ecv 50,000\$00 (fifty thousand escudos) and ecv 1,000,000\$00 (one million escudos).

Article 18
Distinction of the Fraudulent and Negligent Infractions

Whenever the infractions referred to in Articles 8, 9, 12, 13 and 17 can be imputed for negligence; the limits of the fines foreseen shall be reduced to half.

Article 19
Joint Responsibility for the Practice of Infractions

1. In the cases of non-compliance with the obligations mentioned in Article 25 of the VAT Regulation, the corresponding penalties shall be applicable to the heads of the passive subject corporate organs or their representative in the case of fraud, bad will or deceiving management.

2. The penalties foreseen in No. 4 of Article 5 and in Article 14 shall be likewise applicable to the acquirers or addressees of goods and service that may be non-exempt passive subjects when, the mandatory emission of an invoice or equivalent document is not demanded by the former within the deadlines prescribed by law.

3. The penalties foreseen in Articles 7 and 13 are likewise applicable to the acquirers referred to in the preceding number, whether or not tax exempt, in cases of defacing, falsification or corruption of invoices or equivalent documents, as well as for the inexactness and omissions applied to the same, when they intervene fraudulently in the application.

Article 20
Right to the Reduction of Fines

1. The fines may be reduced under the terms of Article 25 and following of the General Tax Code.

2. The penalties foreseen in this legislation for non-compliance with its provisions shall be reduced to the fines indicated next, whenever smaller amounts are not established in them and the infractor presents itself to normalize its tax situation within 15 days immediately following the term of the respective deadline, even if a notice report has been raised or a complaint or denunciation has been made:

- a) Fine of 5% of the amount in default, on a minimum of ecv 2,000\$00 (two thousand escudos), when the obligation consists in the delivery or liquidation of the tax;
- b) Fine varying between ecv 1,000\$00 (one thousand escudos) and ecv 200,000\$00 (two hundred thousand escudos) when other tax obligations are in question.

3. The reductions foreseen in No. 1 are not applicable to the penalties established in No. 2.

4. The liquidation of the fine paid spontaneously should be corrected when lack of the requisites in numbers 1 and 2 occurs.

Article 21 **Cases**

The fines are imposed by way of case established in the Tax Process Code.

Article 22 **Prescription of the Proceedings**

1. A transgression case comminated in this diploma for the application of fines can be

Article 26
Responsibility of the Collective Persons

1. If the infractor is a collective person, the directors, the administrators, the managers

Article 29
Accounting Technicians

1. The notification of the accusation for the application of the fines established in Articles 6, 7, 8, 9 and 10, shall be annotated in the accountant's inscription.
2. If the decision is to condemn, the inscription may be suspended for a period of 6 months to 2 years, depending on the gravity of the infraction.
3. In the event of a repeat offense, the Public Ministry may propose to the competent court the cancellation of the inscription of accountants who are repeat offenders.
4. The provisions of the preceding number are understood to apply without prejudice to the penalties applicable to the passive subjects themselves.

Article 30
Accessory penalties

SECTION II
Transgressions and Penalties

Article 33
Lack or Inexactness of the Declarations

1.

Article 39
Division of the Proceeds From the Fines

The proceeds from the liquidated fines by virtue of the provisions contained in this legislation shall be divided under the terms of the applicable legislation.