SECRETARY OF STATE
OF FINANCE DIRECTORATE GENERAL OF TRIBUTES
Binding Consultations

NUM-CONSULTATION V0028-07

ORGAN SG of Taxes on Legal Entities

DEPARTURE DATE 01/10/2007

NORMATIVE Law 37/1992 art. 90, 91

RD 1777/2004 art. 58, 59, 60

TRLIS RDLeg. 4/2004 art. 140

DESCRIPTION-FACTS The consultant is a commercial entity whose social purpose, among others, the **organization of events** , parties and celebrations, the preparation, distribution and marketing of food and meals, prepared or in a natural state and the provision of all kinds of services related to the food and hospitality businesses, directly or through third parties. These activities are framed under sections 677.9 and 989.2 of the Taxes on Economic Activities rates.

The place of realization of these activities is a leased manor house, being the property of the consultant only the furniture and facilities.

The consultant issues a single invoice for the celebration of each event that includes both the restoration service and the use of the rooms.

QUESTION-RAISED : 1. Type or types of taxation of the Value Added Tax that must be applied in the invoice.

2. In the event that the invoice is issued to an employer or company, subject to retention by the party that corresponds to the lease of the premises.

COMPLETE ANSWER Regarding the Value Added Tax, the following is reported:

First. - Article 90, section one of Law 37/1992, of December 28, on Value Added Tax (BOE of 29) provides that the tax will be required at the rate of 16 percent, except as provided in the following article .

Second. - Article 91 of the Law on Value Added Tax, which regulates the application of reduced tax rates, establishes in section one, 2, number 2, the following:

"One. The 7 percent rate will be applied to the following operations:

(....)

2. The following services benefits:

(....)

2º. The hotel, camping and spa services, restaurants and, in general, the supply of food and beverages to be consumed immediately, even if they are made with the prior request of the recipient. "

In accordance with the foregoing, the 7 percent tax rate is applied to catering services, with own or third party means, which include the use of the premises leased by the consulting entity for said purposes, made by said entity for its clients.

In relation to Corporate Tax, the following is reported:

Article 60 of the Corporate Income Tax Regulation (RIS), approved by Royal Decree 1777/2004, of July 30, provides that:

"1. They will be obliged to withhold or pay into account when they satisfy or pay income from those provided for in article 58 of this Regulation:

a) Legal persons and other entities, including communities of property and owners and entities under the regime of income attribution.

b) The taxpayers for the Income Tax of the Physical Persons that exercise economic activities, when they satisfy income in the exercise of their activities.

c) Individuals, legal entities and other entities not resident in Spanish territory, that operate in it through a permanent establishment.

(...) ".

Article 58 of the RIS, according to the wording established by Royal Decree 1576/2006, of December 22, effective January 1, 2007, establishes that:

"1. A deduction must be made, as a payment on account of the Corporation Tax corresponding to the recipient, with respect to:

(....)

e) Income derived from the lease or sublease of urban properties, even when they constitute income derived from economic operations.

(...)

2. When the same contract includes the provision of services or the transfer of real estate, together with the transfer of assets and rights of those included in section 4 of article 25 of Law 35/2006, of November 28, of the Tax on the Income of the Physical Persons, will have to practice retention on the total amount.

When the same contract includes the lease, sublease or cession of rural properties, together with other movable property, the withholding will not be practiced except in the case of leasing or transfer of business or mines.

3. An income on account of the Corporation Tax corresponding to the beneficiary must be practiced with respect to the income of the previous sections, when they are paid or paid in kind ".

On the other hand, Article 59 of the RIS establishes certain exceptions to the obligation to withhold and enter account, stating that:

"There will be no obligation to withhold or enter account with respect to:

(....)

i) The income from the lease and sublease of urban real estate in the following cases:

1. When it comes to housing leases by companies for their employees.

2. When the rent paid by the lessee to the same lessor does not exceed 900 euros per year.

3. When the activity of the lessor is classified in one of the headings of group 861 of the first section of the rates of the Tax on Economic Activities, approved by Royal Legislative Decree 1175/1990, of September 28, or in some other heading empowering the activity of leasing or subletting of urban real estate, and applying to the cadastral value of the properties intended for lease or sublease the rules for determining the quota established in the headings of the said group 861, would not have resulted in a zero quota.

For these purposes, the lessor must prove to the lessee compliance with the aforementioned requirement, in the terms established by the Minister of Economy and Finance.

4. When the income derives from the financial leasing contracts referred to in section 1 of the seventh additional provision of Law 26/1988, of July 29 on discipline and intervention of credit institutions, as soon as they have object urban real estate.

(...) ".

The question that arises in the query letter is whether the service provided by the consultant should be considered a real estate lease for the purposes considered here (the practice of withholding).

In the case raised, the consultant transfers the use of rooms for the celebration of certain **events** , and also provides a series of services, such as the **organization** of the party, celebration or corresponding event as well as the restoration service, directly or subcontracting the same to a "catering" company. Therefore, in this case, the multiplicity of benefits to which the consulting entity is obliged goes beyond the mere leasing of real estate, since it is precisely the provision of the necessary infrastructure service to the recipients to hold the **events.** or celebrations, the object of the contract, the property being a mere instrument necessary for the provision of the aforementioned service.

Therefore, the returns obtained for the provision of this set of services, which are not limited to the mere lease of a property, will not be subject to withholding on account of the Corporate Tax of the recipient, since they are not within the scope of the cases subject to retention.

What I communicate to you with binding effects, in accordance with the provisions of section 1 of article 89 of Law 58/2003, of December 17, General Tax.