

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 dispatch when a grave offense is committed.
2. The infraction that results from non-filing of a prior registration declaration and the declaration of start up of activities are exceptions to the provisions of the preceding number.

**Article 11
Effective Date**

This legislation goes into effect on 1 January 2004.

Approved on 25 April 2003
The President of the National Assembly, *Aristides Raimundo Lima*
Promulgated on 3 July 2003

Publish it

The President of the Republic, PEDRO VARONA RODRIGUES PIRES
Signed on 4 July 2003
The President of the National Assembly, *Aristides Raimundo Lima*

**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

Fiscal Transgressions

Article 5

Non-delivery of the Tax

1. As long as the facts do not constitute crime, total or partial non-delivery for periods up to 90 days or longer, of the tax that, having been received from the client creates a legal obligation to liquidate it, shall be punishable with a fine varying between the value of the tax in default and double its value, without going over the abstractly established maximum limit.
2. If the conduct foreseen in the preceding number can be attributed to negligence, and even if the delivery period exceeds 90 days, a fine shall be applied varying between one fifth and half of the tax in default, without exceeding the abstractly established maximum limit.
3. The fines foreseen in the preceding numbers shall also be applicable in any case of fraudulent or negligent non-delivery of the tax that, while not being liquidated should have been so under the terms of the law.
4. For the purpose of this Article, liquidation lower than the amount due or undue liquidation of the tax indicated in invoice or equivalent document or mention thereof, deduction or rectification with observing the legal requirements, shall also be punished as non-delivery of the tax.
5. The acquirers or receivers of transmitted goods, as well as the users of the services rendered that are passive subjects of the tax are jointly responsible for the infractions foreseen in this Article, when, in dealing with the situations referred to in the preceding number, they fraudulently collaborate in their practice.

Article 6

Refusal to Deliver, Show or Present Bookkeeping Records or Fiscally Relevant Documents

1. Whosoever refuses to deliver, show or present bookkeeping or accounting records, or documents fiscally relevant to a competent functionary, when the facts do not constitute fiscal fraud, shall be punished with a fine varying between ecv 50,000\$00 (fifty thousand escudos) and ecv 1,000,000\$00 (one million escudos).
2. When the tax administration should previously fix a period for the delivery, showing or presenting the bookkeeping or accounting records and fiscally relevant documents to a competent functionary, the infraction is considered to have consummated within that period.

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, shall be punished with a fine that varies between ecv 50,000\$00 (fifty thousand escudos) and ecv 500,000\$00 (five hundred thousand escudos).

2. If dealing with passive subjects of the simplified regime, the fine varies between ecv 20,000\$00 (twenty thousand escudos) and ecv 100,000\$00 (one hundred thousand escudos)

3. If written irregularity takes place, independently of the procedure for the application of the fine foreseen in the preceding numbers, the passive subject shall be notified to regularize them within a period to be designated, that cannot exceed 30 (thirty) workdays, with the indication that not doing so will result in subjecting to the fine in Article 6.

6. 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 10

Non-existence of Accounting or Fiscally Relevant Books

1. Non-existence of accounting or bookkeeping records, mandatory by force of law, as well as books, records and documents related thereto, regardless of the respective nature, shall be punishable with a fine that varies from ecv 100,000\$00 (one hundred thousand escudos) to ecv 2,000,000\$00 (two million escudos).

2. In the case of passive subjects of the simplified regime, the fine shall vary from ecv 50,000\$00 (fifty thousand escudos) to ecv 500,000\$00 (five hundred thousand escudos).

3. Having verified the non-existence of the written records, independently of proceedings to apply the fine foreseen in the preceding number, the passive subject shall be notified to organize said written records within a period to be designated, which cannot exceed 30 (thirty work days), with the understanding that if it is not done, the fine in Article 6 will be applicable.

Article 11

Non-Filing or Delay in Filing Declarations

Non-filing declarations destined to enable the fiscal administration to determine, evaluate or prove the operations executed by the passive subject, as well as filing outside the legally established period, shall be punished with a fine that varies from ecv 5,000\$00 (five thousand escudos) to ecv 500,000\$00 (five thousand escudos).

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 punished by a fine that varies between ecv 50,000\$00 (fifty thousand escudos) and ecv 1,000,000\$00 (one million escudos).

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 instituted only within up to five years counting from the date in which the infraction was committed.

2. If the transgression case has been halted for five years, the proceedings for the application of the fine shall remain prescribed.

Article 23

Additional

No additional shall be applied over the fines established in this legislation.

Article 24

Prescription for the Obligation to Pay the Fine

The obligation to pay any fine shall prescribe after 10 years have passed after the sentence became executable.

Article 25

Denunciations

1. Verbal or written and signed denunciations shall be admitted before the finance departments and the central and the oversight tax services of the General Directorate of Contribution and Taxation, against those who transgress the provisions of the Value Added Tax Regulation.

2. The denunciations shall be followed up only after a term of identification of the denouncer is prepared. The verbal denunciation should be first reduced to writing.

3. The denunciations shall be kept secret save if, if they are without foundation, they were made fraudulently, in which case, at the request of the denounced, the name of the denouncer and the contents of the denunciation shall be provided to the denounced.

Article 26
Responsibility of the Collective Persons

1. If the infractor is a collective person, the directors, the administrators, the managers the members of the fiscal council, liquidataries of the bankrupt mass, at the time the infraction was committed, shall answer jointly with the collective person for the payment of the fine.
2. The responsibility foreseen in this Article shall take place with regard to the persons referred to therein if the assumptions indicated in the final part of No. 1 occur.
3. Upon extinction of the collective persons, the remaining persons mentioned in this Article shall answer jointly.

Article 27
Responsibilities of the Procurators and the Business Managers

1. When a procurator or business manager commits the acts or omissions and they are responsible for the inexactness or omission, proceedings shall be initiated against them for the application of the fines if the requisites foreseen in No. 2 of the preceding Article are confirmed.
2. For the infraction foreseen in the preceding number the person on whose account he/she acted shall be jointly responsible if he/she had knowledge of or should not ignore the fact that the infractor committed or was going to commit the infraction, and if he/she was capable of doing so did not prevent or did not act so as to repair the infraction.
3. The approval or rectification of the management of the businesses implies the presumption of knowledge of the infractions eventually committed by the manager.
4. The represented are jointly responsible for the fines imposed on their representatives.

Article 28
Filing Complaints With the Public Ministry

When the decision that applied the fine has become an executable sentence, when there reason to do so, the competent entity shall communicate it to the agent of the Public Ministry within the eight days that follow, under the terms of and for the purposes foreseen in provisions of the Penal Process Code, independently of the complaint being filed within the same period with other entities who should be informed of the infraction, for eventual disciplinary proceedings against the respective accountant and other responsible persons.

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

If the transgression by the passive subject of the tax is committed with fraud and the amount of tax in default exceeds ecv 5,000,000\$00 (five million escudos), the provisions of Article 108 of the General Tax Code shall be applied.

Article 31
Disciplinary Responsibility

The public employees who do not comply with some of the obligations imposed in this legislation and in the Value Added Tax Regulation incur in disciplinary responsibility, if such is the case, without responsibility to the penal responsibility foreseen in other legislation.

CHAPTER III
Infractions Relative to the Tax on Special Consumptions

SECTION I
Infractions and Penalties

Article 32
Qualification of the Infractions and Applicable Norms

The infractions to the Regulation on the Tax on Special Consumptions constitute a customs fiscal infraction under the terms of the respective Law of Customs Fiscal Infractions, and shall be punished in harmony with the regime foreseen in that legislation as well as the provisions contained in Section II, Chapter I of this legislation.

SECTION II

Transgressions and Penalties

Article 33

Lack or Inexactness of the Declarations

1. The lack of or inexactness of the declarations referred to in Article 15 of the Regulation on the Tax on Special Consumption, as well as any other event that results in no-delivery to the State coffers or deliveries outside the established deadlines, in all the cases dealing with the whole or part of the tax due by the domestic production of goods subject to the ICE, shall be punished, in the case of simple negligence, with a fine equal to the amount of the tax in default, and, if there is fraud, with a fine graduated between double and five times the tax due.

2. The infractions foreseen in No. 1 of this Article are considered fraudulent when some of the following facts occur:

- a) Omission of the processing or delivery of the invoice or equivalent document referred to in Article 18 of the Regulation on Taxes on Special Consumption as well as the lack of the corresponding liquidation of the tax;
- b) False elements of bookkeeping or documents required in this legislation about the nature of operation that determines subjection to the tax, on the gross price applied or agreed to, or on the amount, nature, type, quality, model or any other elements of identification of the goods transacted;
- c) Non-existence or refusal off showing the books, invoices and other documents required by the Regulation on Tax on Special Consumptions, as well as their occultation, destruction, defacing, falsification or corruption.

3. When it is not possible to determine the tax in default for lack of elements, the fines are graduated between ecv 2,500\$00 (two thousand five hundred escudos) and ecv 300,000\$00 (three hundred thousand escudos).

Article 34

Filing the Declarations Late

1. Late filing of the declarations referred to in Article 15 of the Regulation on Tax on Special Consumptions shall be punished with fines to be established between ecv 5,000\$00 (five thousand escudos) and ecv 50,000\$00 (fifty thousand escudos).

2. If that declaration is filed late, but in the fifteen days that follow the legal deadline, the respective fine shall be reduced to twenty-five percent of the amount fixed.

Article 35
Non-existence of Books or Documents

1. Non-existence of books, invoices and other documents required by the Regulation on Tax on Special Consumptions, as well as their occultation, destruction, defacing, falsification or corruption, that do not constitute a fiscal crime, 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).
2. The passive subjects who cease to archive their books, invoices and documents referred in No.1 of this Article, in the manner and in the deadlines foreseen in Article 19 of that same Regulation, also incur in the penalty foreseen in this Article.

Article 36
Irregularities in Bookkeeping or in Documents

1. For any inexactnesses committed in the books in the books or in the other documents referred to in the preceding Articles, and that do not constitute falsification, a fine to be fixed between ecv 1,000\$00 (one thousand escudos) and ecv 10,000\$00 (ten thousand escudos) shall be applied.
2. The penalty referred to in the preceding number is not applicable to the inexactnesses or omissions referred in Article 33 of this legislation.

Article 37
Demand of Tax in Default

1. The application of the penalties foreseen in this legislation does not, under any circumstance, exempt the infractor from the payment of the respective interests that are shown to be due.
2. Repeat offenses shall contribute as aggravating circumstance for the graduating of the applicable sanctions

Article 38
Processment of the Transgressions

The sanctioning of the infractions foreseen in this legislation and that do not constitute a fiscal crime, shall always be determined in fiscal contra-ordination processment whose tramits and decision shall abide by the terms established in the Customs Fiscal Infraction Law and other applicable contra-ordination laws.

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.