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## OPINION ARTICLE

# [Translated article] Alopecia Under Spain's Current Tax Code



## La Alopecia en el marco tributario actual

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The aim of this article is to set out the medical and legal arguments in favor of the diagnosis, treatment, and prevention of alopecia and its associated diseases being considered exempt from value added tax (VAT). In order to do so, we must first define the criteria based upon which cases of alopecia diagnosed and treated as a disease in medical–surgical terms can be differentiated from other conditions managed so as to address cosmetic issues, with no disease involved (e.g., variations from normal such as constitutional hair loss, high hairline).

## Alopecia: Recognized by National and International Scientific Bodies as a Disease

Alopecia is included in the *International Classification of Diseases, Tenth Revision (ICD-10)* in the section *Disorders of skin appendages (L60-L75)*<sup>1</sup> and in the *International Statistical Classification (ICD 11)* as ALOPECIA OR HAIR LOSS ED 70.0,<sup>2,3</sup> both of which were drawn up by the World Health Organization.

Similarly, alopecia is included in the list of diseases published by the Spanish Ministry of Health, Consumer Affairs and Social Welfare.<sup>4</sup>

There are more than 150 types of alopecia. The most frequent type, androgenetic alopecia (AGA), can affect both men and women. It is neither a variant of normal hair nor a change brought about by aging, since it does not affect all persons after a specific age, but rather requires a disease process and genetic configuration to develop.

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Miniaturization (reduction in the size and thickness of the hair follicles) is the basic clinical finding in AGA. Its pathophysiology (cause and course) is complex and not entirely clear. The many factors involved include androgenic hormones, polygenic inheritance, abnormalities of intracellular epithelial-mesenchymal communication, prostaglandin imbalance, and a loss of the proliferative activity of hair follicle stem cells.<sup>5</sup>

In clinical terms, persons with AGA are characterized by a loss of hair density in the areas that are typically affected depending on sex. Clinical findings can be confirmed using trichoscopy.

## Comorbid Conditions and Prevention

The function of the scalp goes beyond the merely cosmetic, in contrast with what the nonspecialist might think. Hair plays an important role in protecting the skin against the sun's radiation, and the scalp of patients with a long history of AGA commonly has numerous precancerous or in situ lesions known as actinic keratoses, which can sometimes infiltrate to a deep level and progress to squamous cell cancer.

A recent study carried out over almost 30 years in 36 032 White patients clearly established the association between male pattern baldness and the risk of skin cancer affecting the scalp, including invasive melanoma, invasive squamous cell cancer, and basal cell carcinoma.<sup>6</sup> Therefore, the long-term role of the hair in protection of the scalp from sun damage is evident.

Another study showed that bald patients developed more aggressive melanomas, with a poorer prognosis than patients who were not bald. The fact that scalp melanoma is more common in bald older men lends weight to the hypothesis that damage by UV radiation, rather than genetic factors, is the main cause of melanoma affecting the scalp.<sup>7</sup>

Treatment of these skin cancers implies considerable expenditure for the health system in the medium and long terms.

Furthermore, scientific studies have shown that early AGA of the vertex (crown) is an early indicator of atherosclerosis, cardiovascular risk, and metabolic syndrome in men.<sup>8</sup> Similarly, in women, an association has been confirmed between early onset of AGA and cardiovascular risk and lipid profile abnormalities.<sup>9</sup>

In other cases, alopecia is associated with systemic diseases (comorbidities), which exacerbate the condition or trigger it when latent. These include polycystic ovary syndrome, diabetes, thyroid disease, drug-induced iatrogenic conditions, and/or other dermatologic diseases.

The hair follicle also plays a key role in the resolution of skin injuries, in the sense that its loss hampers healing of injury or of ulceration of the scalp.

In addition to the aspects set out above, which are clinically obvious and scientifically verified, we must include a very important aspect, namely, the potential psychological effects of AGA on many affected individuals, especially young people and women. Patients who visit the dermatologist for treatment of their alopecia have been shown to experience negative psychological and emotional effects.<sup>10</sup> Given that the World Health Organization's integrated

definition of health includes both physical and psychological and emotional well-being, AGA should be clearly considered a disease because of the negative psychological changes it brings about.

The diagnosis of any psychological disorder, no matter how mild, included in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*, which is published by the American Psychiatric Society, should be made by a medical professional and should not be confused with the subjective evaluation of the patient.<sup>11</sup> In this sense, the dermatologist is professionally qualified to record mild psychopathological disorders in the clinical history (e.g., anxiety, depression, sleep disorders, diminished self-esteem, difficulties with social relationships) that, in most cases, are resolved with effective treatment of AGA. In order to determine the degree of a patient's psychological involvement, we can apply objective tools such as the *Hair Specific Skindex-29* questionnaire, which has been validated by the scientific community.<sup>12,13</sup>

On page 75 of its portfolio of services, the Spanish Academy of Dermatology (Academia Española de Dermatología y Venereología [AEDV]) sets out the need for knowledge of psychodermatologic conditions as part of general dermatologic awareness, although, where necessary, the patient will be referred to a psychiatrist or psychologist, according to clinical practice guidelines.<sup>14</sup>

## Hair Transplant: Treatment of One Disease and Prevention of Others

Alopecia can only be cured using a global approach. Treatment is based on curbing or slowing hair loss, restoration of hair by solving the problem or returning the disease to earlier stages, and prevention of associated disease.

Treatment (of different types) is considered mandatory in the care services provided by the National Health System and forms part of the portfolio of services provided in all the Autonomous Communities. Many dermatology departments in the public health system have a trichology unit to provide specialist treatment for alopecia.

The dermatologist is the specialist best qualified to make a global assessment of alopecia in terms of making a diagnosis, evaluating comorbid conditions, and setting the criteria for therapy. Treatment is very varied and includes solutions (minoxidil), oral agents (finasteride, minoxidil, dutasteride), platelet-rich plasma infiltration, low-level laser therapy, and hair follicle transplantation (follicular units). Of note, transplant is no more than an additional surgical option that can accompany others in the armamentarium, and it would be absurd to consider it the only treatment option, since it is subject to major failures.

In its Dermatology Service Portfolio, the AEDV recognizes trichology (7.13 Specialized Functional Trichology Unit) as the area of dermatology aimed at the study of diseases of the hair follicles and scalp. This area differs completely and is independent from cosmetic dermatology. Within the area of trichology, the AEDV also sets out diagnostic and therapeutic procedures for patients with alopecia, including autologous hair follicle transplant, more commonly known as a hair transplant or graft.<sup>14</sup>

Hair transplant should form part of an integrated treatment (medical-surgical) and cannot be considered a purely cosmetic intervention. It is performed after an appropriate diagnosis has been made by a competent medical professional in order to avoid unnecessary interventions or interventions that may not prove successful and to prevent severe disease.

Alopecia can clearly be considered an illness, and the purpose of treating it is both the immediate effect (i.e., hair regrowth) and the prevention of serious conditions such as skin cancer, since, at the time of the transplant, none of these conditions is present and can be avoided.

Some surgeons may carry out hair transplants without considering these premises of diagnosis and integrated treatment. Therefore, their interventions should perhaps be addressed differently.

### Application of Value Added Tax in the Process of Diagnosis, Prevention, and Treatment of Alopecia

Having clearly shown that alopecia is a disease and that, as with any other dermatologic disease, it may have a cosmetic component, since it affects body image,<sup>10</sup> we must now determine whether, and in which cases, tax exemption can be applied. Therefore, it is appropriate to review the law on value added tax (VAT) and exemptions.

Spanish Law 37/1992 of 28 December on Value Added Tax (VAT), article 20, section 1, number 3, "Exemptions in domestic operations", states that exemptions can be applied in the following operations: Care provided to physical persons by medical or health care professionals, irrespective of who is the recipient of said care. For the purposes of this tax, medical and health care professionals are all those considered as such in the legal system, as are psychologists, speech therapists, and opticians licensed by official centers or centers recognized by the public administration. The exemption includes the provision of medical, surgical, and health care services associated with the diagnosis, prevention, and treatment of diseases, including clinical analyses and radiological examinations.

With respect to alopecia, we now set out the meaning of the terms *diagnosis*, *prevention*, and *treatment*.

Diagnosis refers to services provided to qualify or determine the specific character of alopecia or, where applicable, the absence thereof. Consequently, we understand that consultations aimed at evaluating the type of alopecia, including all necessary additional examinations (e.g., trichoscopy or scalp biopsy), are exempt from VAT.

Prevention encompasses those services provided early in order to prevent disease or the risk thereof.

Treatment encompasses those services provided to heal or alleviate and whose objectives are to curb or slow hair loss by curing the disease or returning it to earlier phases. This may involve the use of autologous hair transplantation or grafting as a single surgical technique or in combination with others.

The dermatologist is the only specialist capable of providing a tailored approach to the patient in each of these 3 areas, which must be addressed if we are to ensure that the disease is managed based on a global approach.<sup>14</sup>

In the legal system, the ruling of the Court of Justice of the European Union (CJEU) c-141/00 in the case of *Ambulanter Pflegedienst Kügler GmbH vs Finanzamt für Körperschaften*, Section 27, states that the requirements for exemption (from taxes such as VAT) are as follows: "Just two conditions need to be met: medical services must be involved and they must be supplied by persons who possess the necessary professional qualifications".<sup>15</sup>

In its ruling of 21 March 2013, case number C-91/12,<sup>16</sup> the CJEU considered the criteria for determining whether cosmetic surgery procedures and cosmetic treatments fall within the concepts of "medical care" or "provision of medical care". Thus, Section 39 reminds us that a treatment or intervention, even if it is cosmetic, will involve tax-exempt health care if this is justified by a competent professional and is therapeutic in its objective, this being understood as protecting, maintaining, or restoring human health in such a way that services such as those at issue in the main proceedings (that is, plastic surgery and cosmetic treatments), in so far as their purpose is to treat or provide care for persons who, as a result of an illness, injury, or a congenital physical impairment, are in need of plastic surgery or other cosmetic treatment, may fall within the concept of "medical care" and "the provision of medical care".<sup>16</sup>

The CJEU also considers that the fact that services such as those at issue in the main proceedings are supplied or undertaken by a licensed member of the medical profession or that the purpose of such services is determined by such a professional may influence the assessment of whether interventions such as those at issue in the main proceedings fall within the concept of "medical care" or "provision of medical care"<sup>16</sup> within the meaning of Article 132(1)(b) and (c) of Directive 2006/112, respectively.<sup>17</sup>

Furthermore, the judgment dated 10 June 2010, case number C-86/09, *Future Health Technologies* (Section 40), expressly states that "whilst medical care and the provision of medical care must have a therapeutic aim, it does not necessarily follow that the therapeutic purpose must be confined within a particularly narrow compass".<sup>18</sup>

In the application of the ruling of the CJEU, the consultations of the Spanish General Directorate of Taxes (GDT) define what must be understood as medical-health care as that provided in the areas of diagnosis, treatment, and prevention of an illness by health care personnel and recognize that hair implants may be considered as such.

With regard to the application of this exemption, the numerous binding consultations put to the GDT all state that in order to justify the exemption, there must be a medical act that is always associated with the diagnosis, prevention, or treatment of an illness. Below, we provide a selection of these consultations as examples.

Binding consultation V1214-19 states, as do many others, that exemption from VAT will apply to medical, surgical, and health care services associated with the diagnosis, prevention, and treatment of alopecia provided by medical or health professionals in line with current legislation.<sup>19</sup>

In this sense, the recent Consultation V-0238-21, of 10 February 2021, is also explicit, in that VAT-exempt services include medical, surgical, and health care services associated with the diagnosis, prevention, and treatment of illnesses provided by medical or health care professionals

according to the legislation in force, even if the medical or health care professionals who provide these services act on behalf of a commercial company or provide the services to said company and the company, in turn, invoices these services to the recipient thereof.<sup>20</sup>

The GDT concludes that surgical interventions that, while being cosmetic in nature, are associated with the diagnosis, prevention, and treatment of an illness, will be exempt from VAT, including (see above) treatment of alopecia. In the abovementioned consultation V-0238-21, the GDT recognizes that it does not correspond to this Directorate to qualify whether a specific surgical intervention that is cosmetic in nature arises from an illness, injury, or congenital physical impairment in the terms determined by the application of the exemption and accepts, for the purpose of accrediting the intervention or treatment, the clinical history or reports, psychological reports, imaging tests, medical tests, diagnostic tests, etc. and any other probative element that the health professional considers justifies the exemption of the surgical intervention or treatment, considering that the issue would have to be analyzed and evaluated in the individual case.<sup>20</sup>

Consequently, for the exemption from VAT to apply, the GDT transfers the burden of proof to the physician or entity that provides the medical services to the patient.

Thus, professionals can provide duly anonymized clinical histories for each patient in which a series of circumstances will be accredited, as follows:

- The nature of the disease or illness the treatment is for.
- The definition of the treatment considered necessary by the physician.
- The management and performance of the therapeutic technique by appropriately trained health care professionals.

When it is necessary to prove a psychological abnormality, the patient's subjective understanding is not sufficient. This understanding must be medical in nature and must be based on appropriate verifications made by personnel qualified for this purpose and that can affect the categorization of the operation performed.<sup>19</sup> This observation, which was extracted from the reviews of the GDT, does not allow us to deduce that the participation of a psychologist or psychiatrist is necessary, since it only refers to duly qualified personnel. Therefore, we can infer that dermatologists themselves, with appropriate training, can record and/or quantify the extent of the involvement.

Mere subjective evaluations of the cosmetic intervention by the person undergoing the intervention are not, themselves, a deciding factor when determining whether said intervention is therapeutic in its aims.

In this sense, as previously mentioned, we consider it necessary to apply questionnaires such as the Hair Specific Skindex-29<sup>12,13</sup> to determine the degree of psychopathological involvement in patients undergoing a transplant.

In short, VAT-exempt care can include cosmetic interventions whose objective is to diagnose, treat, or cure illnesses or health problems, or to protect, maintain, or restore human health, permitting a psychological condition as the origin of these problems. However, this must be diagnosed

by a specialist and in no case will be based on the patient's judgment.

In summary, hair does not have a merely cosmetic function. It plays a key role in protecting from sunlight, thus preventing the appearance of precancerous skin lesions or established skin cancer. AGA is associated with a greater risk of metabolic and cardiovascular diseases, and the hair follicle plays a key role in the healing of injuries.

To conclude, following the ruling of the CJEU and the criterion of the binding consultations put to the GDT, treatment of alopecia, including hair grafts, when administered by health care professionals and within an integrated framework of diagnosis and medical-surgical treatment and prevention of associated diseases, is exempt from VAT. This should be documented, as pointed out above.

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## Conflicts of Interest

The authors declare that they have no conflicts of interest.

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