

APPROVAL OF THE IMMEDIATE INFORMATION SHARING SYSTEM

ROYAL DECREE 596/2016, OF DECEMBER 2, 2016 ON THE MODERNIZATION, ENHANCEMENT AND FURTHERING OF THE USE OF ELECTRONIC MEDIA IN THE MANAGEMENT OF VAT, WHICH AMENDS THE VAT REGULATIONS, APPROVED BY ROYAL DECREE 1624/1992, OF DECEMBER 29, 1992, AND THE GENERAL REGULATIONS ON THE STEPS AND PROCEDURES FOR TAX MANAGEMENT AND AUDITS, AND IMPLEMENTS THE COMMON RULES ON THE PROCEDURES FOR APPLICATION OF TAXES, APPROVED BY ROYAL DECREE 1065/2007, OF JULY 27, 2007 AND THE REGULATIONS ON INVOICING OBLIGATIONS, APPROVED BY ROYAL DECREE 1619/2012, OF NOVEMBER 30, 2012

Royal Decree 596/2016, of December 2, 2016 was published on December 6 in the Official State Gazette (BOE). Its most prominent amendment and the topic of this Commentary is the introduction of the Immediate Information Sharing System.

Under this system, the traders or professionals who have to file monthly returns must also keep their VAT records (VAT register books) on the website of the Spanish Tax Agency (AEAT) by sharing invoicing records and additional tax relevant information electronically.

Those falling under this new obligation (or electing to perform their bookkeeping obligations in this way while not being required to do so) will not have to file any other information returns (forms 347 and 340) and will have the time period for filing their VAT self-assessment returns lengthened to end on the 30th day of each month and the last day of February. According to the introduction to the new provisions, they will not have to file an annual summary return either.

1. VAT recordkeeping system on AEAT's website ("SII" system)

As we mentioned above, the new VAT recordkeeping system has finally been published in the BOE, a system that, in the light of its special features, has been called the Immediate Information Sharing System ("Suministro Inmediato de Información" or "SII").

According to the regulations, the SII system stems from various articles in the VAT Directive which lay down accounting obligations and allow the member states to introduce procedural obligations to ensure correct collection of the tax and prevent fraud.

1.1 The users of the system

The SII system has been initially laid down for any traders or professionals who are required to file monthly VAT self-assessment returns, in other words, any traders or professionals whose turnover in the previous year exceeded €6,010,121.04; any authorized to apply for refunds on a monthly basis, and any applying the special scheme for groups of entities (Spanish VAT Grouping).

Other traders or professionals may elect to use the system, in which case they will be required to file monthly VAT returns.

This election must be made in the month of November before the beginning of the calendar year in which the system is to come into effect, and notified by filing a census notification form. The system may be elected on commencing operations when the return for the commencement of the taxable person's activity is filed, in which case the election will take effect in the then current calendar year. Exceptionally, any trader or professional wishing to use the system from July 1, 2017 may make the election in June.

In both cases, the election is valid until it is withdrawn, although the system must be used for at least one calendar year.

Any traders falling outside the monthly refund procedure or the scheme for groups of entities, will not be required to keep their records on the SII system, unless they are also required to file monthly returns.

1.2 Characteristics of the SII system

It is a new recordkeeping system, though the information to annotate or share differs from the books (recordkeeping) that had been required to date.

The books must be kept on the website of the Spanish Tax Agency (AEAT), by sharing invoicing records - not the invoices themselves - electronically (using a web service or an electronic form which must be approved by Ministerial Order in relation to its design), and in a unified manner for all the fixed establishments that a taxable person may have in Spanish VAT territory.

1.2.1 Register Book of Invoices issued

In relation to the book of invoices issued, besides the information already required generally, the following information needs to be shared:

- (a) Type of invoice issued, stating whether it is a complete, or simplified, invoice.
- (b) Specification, if applicable, that the annotation is a rectification of a previous registration.
- (c) Description of the transactions.
- (d) Any correcting invoices must be identified as such and include the reference number of the corrected invoice or, if applicable, the specifications that are amended.
- (e) Any invoices issued to replace, or in exchange for, simplified invoices issued earlier, the reference number of the replaced invoice or invoice for which it is exchanged or if applicable, the specifications that are replaced or exchanged.
- (f) The specific details required on invoices (exemptions, billing by recipient, reverse charge mechanism, travel agency scheme or special scheme for used goods) and those relating to the scheme for investment gold or the compensatory charge scheme.
- (g) Assessment period for the recorded transactions to which the outgoing invoices relate.
- (h) Specification that the transaction is not subject to VAT, if that is the case.
- (i) If the outgoing invoice has been issued in accordance with an approval concerning invoicing matters, the reference of the granted approval.

The numbering of new details has not been completely determined in the royal decree, in that it allows further tax relevant information or documents or other specifications for the identification of invoices to be added by Ministerial Order.

1.2.2 Register Book of Invoices received

The new royal decree also lays down additional information in relation to invoices received:

- (a) The number and, if applicable, series appearing on the invoice, which are the details that will replace the order of receipt number laid down generally.
- (b) Specification, if applicable, that the annotation is a rectification of a previous registration.

- (c) Description of the transactions.
- (d) The specific details that the invoices must contain (which are similar to those laid down for invoices issued, though the exemption for transactions does not have to be stated) together with whether they relate to an intra-Community acquisition of goods, in addition to the specific details under the scheme for groups of entities.
- (e) The deductible VAT¹ relating to the assessment period in which the annotation is made, which has not been affected by subsequent corrections.
- (f) Assessment period in which the transactions to which the incoming invoices relate are recorded.

In relation to import transactions, the date on which the transaction was recorded in the accounts and the number of the relevant customs document must be provided.

As above, further tax relevant information or documents may be required by Ministerial Order.

1.2.3 Register Book on Capital Goods and Book on certain intra-Community transactions

These books must also be kept on the AEAT's website, although their contents have not changed.

1.2.4 Time periods for sending the information

The information related to outgoing invoices must be shared within four calendar days from the invoice issue date. If they are invoices issued by the recipient or by a third party, a longer time period of eight calendar days is allowed. In both cases, subject to a limit ending on the 16th day of the month following that in which the VAT on the transaction became chargeable. On January 1 the same limit will come into effect generally for invoices to be sent to traders.

Note that the royal decree lays down that anyone who has elected for the required invoices to be issued by the recipients of the transactions, or by third parties, must file a census notification informing of that election, the date from which the election is to take effect and, if need be, withdrawal of the election and the effective date of withdrawal.

Incoming invoices must also be reported within four calendar days, although the period starts to run on the date when they are recorded in the accounts. A limit is laid down, also ending on the 16th day of the month following the assessment period in which the transactions are included. A similar rule applies to import transactions.

¹ This detail is required generally regardless of the recordkeeping methods used.

Transactions under the special VAT cash-basis accounting scheme are reported without any particular differences from the standard scheme, apart from the need to share the relevant information at the time of their collection or payment.

For the transactions included in the books on certain intra Community transactions, the four-day period runs from when the delivery or transport begins, or in some cases, from when the goods to which they relate are received.

Lastly, any corrections to details entered on the records must be shared before the 16th day of the month following the end of the period to which the return in which they must be included relates.

Saturdays, Sundays and national public holidays do not count for calculating the time periods.

1.2.5 Other effects of the SII system

As mentioned in the introduction, recordkeeping using the SII system also implies the following:

- The filing period for VAT self-assessment returns will be lengthened from the 20th to the 30th day of the following month (the return for January, on the last day of February).
- There will no longer be a requirement to file an annual return for transactions with third parties (form 347).
- There will no longer be a requirement to file a return with the contents of the VAT books (form 340) from July 1, 2017.
- There will no longer be a requirement to file an annual summary return (even though no express amendment has been made, this may be further specified by Ministerial Order).
- A breach of the obligation to keep VAT books on the website will be treated as a delay in proceedings for a reason not attributable to the tax authorities which will run between the beginning of a proceeding on which it may have an effect and the filing or recording date. It must be remembered that the General Taxation Law already lays down specific penalties (article 200) in this respect.

1.3 Entry into force and transitional provisions

The information sharing obligation enters into force on July 1, 2017.

Anyone required to comply with this obligation, however, must send their invoicing records for the first six months of 2017 in the period between July 1, 2017 and December 31, 2017.

In 2017, the period for sharing information related to the outgoing invoices, incoming invoices, import documents and the intra-Community transactions which must be recorded in their own specific book, has been lengthened to eight calendar days.

Follow us:



www.garrigues.com

This publication contains general information and does not constitute professional opinion or legal advice.

© J&A Garrigues, all rights reserved. Exploitation, reproduction, distribution, public communication and transformation, total and partial, of this work, without written permission from Garrigues.

Hermosilla, 3 - 28001 Madrid (Spain) - T +34 91 514 52 00