

**ROYAL DECREE 1619/2012, OF NOVEMBER 30, 2012, APPROVING THE REGULATIONS ON INVOICING OBLIGATIONS**

As we discussed in our previous bulletins, the new regulations on invoicing obligations were finally published in the Official State Gazette of December 1, 2012. These regulations, which replace the current regulations approved by Royal Decree 1496/2003, will take effect on January 1, 2013.

As many of the provisions included in these new regulations remain the same as those currently in effect, we will confine our comments to the main new features of the regulations.

**1. APPLICABLE INVOICING RULES**

The first new feature they contain relates to the establishment of connecting factors (previously unregulated) according to which an invoice must be issued in accordance with Spanish law. The cases are as follows:

- Where the transaction is deemed supplied in Spain according to the VAT place of supply rules, unless the supplier is not established in Spanish VAT territory, the reverse charge mechanism comes into play and the power to issue the invoice has not been delegated to the recipient.<sup>1</sup>
- Where the supplier is established in Spanish VAT territory or has a permanent establishment in that territory or, in the absence thereof, the place where he has his permanent address or usually resides, from which the transaction is performed and the transaction is not deemed performed in Spanish VAT territory, in the following cases:
  - (a) Where the transaction is not subject to VAT in another member state, the reverse charge mechanism comes into play or the power to issue the invoice has not been delegated to the recipient.
  - (b) Where the transaction is performed outside the EU.

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<sup>1</sup> No distinction is made in relation to non-EU supplies which, in accordance with the directive, are subject to the obligation to issue the invoice in accordance with the rules of the member state in which the transaction takes place.

## 2. OBLIGATION TO ISSUE INVOICES AND INVOICING BY THIRD PARTIES

The cases where an invoice must be issued remain essentially unchanged. Under a new provision, however, this obligation will no longer apply to supplies of financial services (except for those relating to public authenticating officials) or to supplies of insurance except where they are deemed supplied in the Spanish VAT territory or in another member state and are not exempt from VAT.<sup>2</sup> The cases where third parties issue invoices are kept in place as well. Where the third party is located outside the EU and outside countries with which legal instruments relating to mutual assistance have been signed, authorization from the Spanish State Tax Agency will no longer be required, as prior notification will be enough.<sup>3</sup>

Where the third party is the recipient of the transaction, the following is required:

- Prior agreement between the parties.
- The procedure for the acceptance of invoices is to be the procedure decided by the parties.
- The recipient's obligation to send a copy of the invoice to the trader that performed the transaction is kept in place.
- The contents of the invoice must state that it was issued by the recipient.

## 3. ELIMINATION OF RECEIPTS: THE SIMPLIFIED INVOICE

The current receipts have been replaced with simplified invoices which may be issued, at the choice of the party required to issue them, where the amount of the transaction does not exceed €400, including VAT; where a correcting invoice must be issued; or where the issue of receipts is now authorized and the amount of the transaction does not exceed €3,000, including VAT, as well as where it is authorized by the Tax Management Department of the State Tax Agency.

In relation to the contents of invoices and of simplified invoices, as well as the additional particulars that they must include to give the right to deduct the VAT charged, please see the comparative chart in Exhibit I.

It is worth noting that simplified invoices, unlike receipts, may entitle their recipient to deduct the VAT charged. In this case, they must contain additional particulars (see the "Simplified invoice contents (art. 97)" column in the Exhibit).

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<sup>2</sup> See, however, section 8 on documentation obligations.

<sup>3</sup> A new notification is not necessary in previously authorized cases and in those in which the authorization procedure began before the Royal Decree entered into force. Applications for authorization already in progress will now be considered notices, although the tax authorities may still request additional documentation within not more than three months after the regulations take effect.

Another new feature, also in relation to the contents of simplified invoices, is that where the commercial or administrative practices of the business sector in question or the technical conditions for issuing invoices make it particularly difficult to include all the required particulars in the invoices, the Tax Management Department may authorize the issuance of simplified invoices (as opposed to full invoices) but it may also require the inclusion of particulars in addition to those generally required for these types of invoices or it may authorize the issuance of simplified invoices that do not include certain particulars.

#### 4. ELECTRONIC INVOICING

The new regulations define an “electronic invoice” as follows: an invoice which has been issued and received in electronic format without requiring the use of any particular type of technology.

To be valid, the recipient must give its consent (the reference to this being express consent has been deleted).

The new regulations are aimed at equal treatment of electronic invoices and paper invoices which, in both cases:

- must reflect the true substance of the transactions that are documented and guarantee this certainty for the entire term of their validity; and
- their authenticity, integrity and legibility must be ensured.

These points must be ensured by using any means of proof permitted by the law and, in particular, by using the “management controls typical in the taxable person’s business or professional activity,” which must permit the creation of a reliable audit trail that establishes the necessary connection between the invoice and the supply of goods or services that it documents.

The authenticity of the origin of the invoice must give assurance of the identity of the party required to issue it and of the issuer of the invoice.

The integrity of the contents of the invoice must give assurance that the contents have not been modified.

In the case of electronic invoices, in addition to the above-mentioned means of proof, the new regulations establish that the authenticity of the origin and the integrity of the contents will be ensured by any of the following:

- the use of an advanced electronic signature based either on a recognized certified or on a recognized certificate created using a secure creation device;
- an EDI (electronic data interchange) system that provides for the use of procedures that ensure the authenticity of the origin and the integrity of the data; or

- other means that have been notified prior to their use and validated by the tax authorities.

## 5. PERIOD FOR ISSUING INVOICES

Invoices must be issued when the transaction is performed. However, where the recipient is a trader, invoices may be issued, at the latest, before the 16<sup>th</sup> of the month following the date of the chargeable event and, in the case of intra-Community transactions, before the 16<sup>th</sup> of the month following that in which the dispatch or transportation began.

## 6. STORAGE OF INVOICES

The new regulations specify that the procedures used to store invoices must ensure the authenticity of their origin and the integrity of their contents and their legibility.

Where storage is delegated to a third party located outside the EU and outside countries with which legal instruments relating to mutual existence have been signed, prior notification to the Spanish State Tax Agency will be required.<sup>4</sup>

The requirement to store invoices extends to other documents supporting the right to deduct, such as those containing the assessment of VAT on imports or the self-assessment of VAT reported in transactions treated as imports.

## 7. SIMPLIFIED INVOICES REPLACED WITH OR EXCHANGED FOR INVOICES

The new regulations provide for the replacement of simplified invoices with invoices on similar terms to the previous regulations, and include a transitional provision whereby documents serving as an invoice issued in accordance with the regulations in force can be replaced with invoices where the recipient is a trader or requires an invoice, within four years after the chargeable event. An invoice issued in this manner is not treated as a correcting invoice.

## 8. DOCUMENTATION OBLIGATIONS

The new royal decree expressly provides that the invoicing obligations it contains will apply for the purposes of any public subsidy or aid and that, moreover, they will not preclude any other invoicing obligations that traders or professionals may have under corporate/commercial, financial or insurance rules or in relation to public subsidies or aid.

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<sup>4</sup> Same as previous note.

## 9. TRANSITIONAL SYSTEM FOR AUTHORIZATIONS ALREADY GRANTED

Authorizations granted by the State Tax Agency in connection with invoicing will remain in force when the new regulations take effect, as long as they are not expressly revoked. This does not apply, however, to authorizations allowing taxable persons not to provide the particulars of the recipient (non-trader) or authorizations allowing for the simplification of the information that invoices must contain. Both these authorizations will expire on January 1, 2013, except for those granted for the issuance of invoices that contained in any event: the invoice issue date, the identity of the party required to issue it, identification of the type of goods or services supplied and the VAT payable or the information needed to calculate it.

The authorizations given for the issue of receipts will be deemed to have been granted to issue simplified invoices on or after January 1, 2013.

INVOICE CONTENTS - RD 1496/2003	INVOICE CONTENTS – RD 1619/2012	RECEIPT CONTENTS – RD 1496/2003	SIMPLIFIED INVOICE CONTENTS	SIMPLIFIED INVOICE CONTENTS (ART. 97)
Number and series	Number and series	Number and series	Number and series (*)	Number and series (*)
Issue date	Issue date		Issue date	Issue date
Supplier's and recipient's identification particulars	Supplier's and recipient's identification particulars	Supplier's identification particulars	Supplier's identification particulars	Supplier's identification particulars
Issuer's TIN	Issuer's TIN	Issuer's TIN	Issuer's TIN	Issuer's TIN
Recipient's TIN in specific cases	Recipient's TIN in specific cases			Recipient's TIN
Supplier's and recipient's permanent address	Supplier's and recipient's permanent address <sup>5</sup> (1)			Supplier's and recipient's permanent address
Description of the transaction	Description of the transaction		Details of the type of goods or services supplied	Details of the type of goods or services supplied
Information needed to determine the taxable amount, including unit price and discounts	Information needed to determine the taxable amount, including unit price and discounts			
Tax rate	Tax rate	Rate applied or "VAT included"	Rate applied and, also optionally, "VAT included" (*)	Rate applied and, also optionally, "VAT included" (*)
VAT payable	VAT payable	Total consideration	Total consideration (*)	VAT payable
Date of chargeable event if not same as issue date	Date of chargeable event if not same as issue date		Date of chargeable event if not same as issue date (*)	Date of chargeable event if not same as issue date (*)
Specific particulars	Specific particulars		Specific particulars (*)	Specific particulars (*)

<sup>5</sup> The specific reference to the exclusion of the obligation if the recipient is an individual is deleted.

(\*) Authorization not to include these particulars may be applied for to the Tax Management Department. As for the reference to the rate and the total consideration, the authorization will require that at least the VAT payable and the information needed to calculate it be stated.

<b>SPECIFIC PARTICULARS THAT MUST BE INCLUDED IN INVOICES</b>	
<b>RD 1496/2003</b>	<b>RD 1619/2012</b>
Exempt transaction	Exempt transaction
Transaction not subject to VAT	
Transaction subject to reverse charge mechanism	Transaction subject to reverse charge mechanism
	Invoicing by recipient
New means of transportation	New means of transportation
Triangulation arrangements (intermediary)	
	Invoicing by recipient
Scheme for travel agencies	Scheme for travel agencies
Special arrangements for second-hand goods, works of art and collectors' items	Special arrangements for second-hand goods, works of art and collectors' items

For more information

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