



New reporting requirements approved for payment service providers

Final approval of the Bill by the Lower House

Tax Alert



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Approval of the Law introducing new reporting requirements for payment service providers in respect of cross-border payments.

The Lower House has given final approval for a Bill transposing European Union Directives on the accessibility of certain goods and services, migration of highly-qualified individuals, tax matters and the digitalisation of notarial and registry procedures, and amending Law 12/2011 of 27 May 2011, on civil liability for nuclear damage or damage caused by radioactive materials (the “Bill”). The next step, publication in the Official State Gazette (“BOE”), is expected in the coming days.

Among other things, the Bill amends the Value Added Tax Law (the “VAT Law”) to incorporate Council Directive (EU) 2020/284 of 18 February 2020 as regards introducing certain new requirements for payment service providers (PSPs), set to apply as of 1 January 2024.

Access to the Spanish version [here](#).

The final approval of the Bill transposing Council Directive (EU) 2020/284 amending Directive 2006/112/EC (the “VAT Directive”) as regards introducing certain requirements for payment service providers (commonly referred to as PSPs) comes in the wake of the e-commerce boom and aims to combat potential VAT fraud in cross-border transactions.

As a result of the above Directive and its transposition into domestic law, payment service providers in Spain are required to **(i)** keep sufficiently detailed records of payees and cross-border payments made each quarter for a period of three years and **(ii)** make the aforementioned records available to the tax authorities.

As regards its subjective scope, these requirements only apply to payment service providers defined in article 5, paragraphs 1 and 2 of Royal Decree-Law 19/2018, transposing Directive (EU) 2015/2366 (“PSD2”) in Spain. The reporting obligation is thus limited to the following four categories of PSP:

- credit institutions, including branches thereof;
- electronic money institutions; and
- payment institutions and post office giro institutions which provide payment services.
- The subjective scope of the Bill also includes central banks and public bodies. It is nevertheless unlikely that such institutions will be subject to the reporting obligation as they do not normally provide the payment services included within the objective scope.

Obligation to keep records

The requirement to keep detailed records of payments and payees will only apply to PSPs where **cross-border payments** are concerned, i.e. where the payer is located in a Member State and the payee (defined as a natural or legal person who is the “intended recipient” of funds which have been the subject of a payment transaction) is located in another Member State or in a third country.

This requirement will be binding on all payment service providers involved in the payment chain, irrespective of whether they are providers of the payer or of the payee.

For these purposes, the location of the payer and payee in a particular Member State will be determined on the basis of the IBANs of the payment accounts and the BIC, or any other identifier code which unambiguously identifies, and gives the location of, the PSP of the payer and/or the payee.

According to Directive (EU) 2020/284 (this information is not specified in the Bill), the records must include, inter alia, **(i)** the BIC or any other identifier code that identifies the payment service provider, **(ii)** the business name of the payee, **(iii)** the tax/VAT identification number or any other tax number of the payee, **(iv)** the IBAN, which gives the location of the payee, **(v)** the BIC or any other identifier code that identifies the PSP of the payee, **(vi)** the address of the payee, if available, and **(vii)** the details of the cross-border payment (and/or of any payment refunds), including the date, time, amount, currency, Member States of origin of the payment and of the payee, any other reference which unambiguously identifies the payment and, where applicable, information that the payment is initiated at the physical premises of the merchant.

Making the records available to the tax authorities

Where, in the course of a calendar quarter, the number of cross-border payment services provided by a PSP to the same payee exceeds twenty-five, the PSP in question will be required to report the details of the services to the tax authorities of the country from which the service is provided, unless it is a PSP of the payer and one of the payee's PSPs is located in a Member State.

The Bill does not elaborate on the manner in which the records should be made available to the tax authorities, which is nonetheless detailed in Directive (EU) 2020/284 by reference to Council Regulation (EU) 2020/283 of 18 February, amending Regulation (EU) 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud.

This EU Regulation, which is directly binding and does not require transposition into domestic legislation, and which is in turn implemented by [Commission Implementing Regulation \(EU\) 2022/1504 of 6 April 2022](#), stipulates that payment service providers must report the information collected to the relevant tax authorities each quarter using a standard electronic form, in XML format.

The information collected by the tax authorities of each Member State will then be reported to a central electronic system of payment information (CESOP) -to be developed, maintained, hosted and managed by the European Commission-, intended to (i) provide a full overview of payments received by payees from payers located in the Member States and (ii) make available to the Eurofisc liaison officials the result of specific analyses of information.

Initial report

This requirement is set to apply as of 1 January 2024. The time limits for the initial report are as follows (subject to confirmation by regulations):

- The first quarterly return must be submitted by the PSPs in April 2024 (by no later than 30 April 2024).
- The tax authorities must then convey the information included in the return to CESOP by 10 May 2024 at the latest.

The relevant return form will also need to be approved by the Tax Agency.

Impact of the Directive

The implementation of this Directive gives further impetus to the mechanisms for the automatic exchange of indirect tax information among Member States and will call for PSPs to set in place new procedures and controls and adapt their IT systems to show that they are cooperating in the fight against VAT evasion while, at the same time, avoiding the potential shifting of liability to them by the tax authorities.

Entry into force

Having already been ratified by the Lower House, the Bill will foreseeably be enacted into law immediately, although the relevant implementing regulations and the Order regulating the pertinent tax form have yet to be approved.

In view of the complexity of the legislation, we can also expect the tax authorities to publish informative criteria via the Q&A mechanism used for other developments concerning the automatic exchange of information, such as CRS/FATCA and the implementation of DAC6.

In any event, both the Law transposing Council Directive (EU) 2020/284 and the above EU Council Regulations are set to enter into force on 1 January 2024.

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