



# Main tax implications for the finance and insurance industries of the Bill transposing DAC7

## Tax Alert



May 2023

[kpmgabogados.es](http://kpmgabogados.es)  
[kpmg.es](http://kpmg.es)

## Main tax the finance and insurance industries of the Bill transposing DAC7

The final text that is to amend General Taxation Law 58/2003 of 17 December 2003 with a view to transposing European Directive 2021/514 (known as “DAC7”) was approved by the Lower House of the Spanish Parliament on 18 May 2023, giving the green light for the text containing the tax-related amendments included by one of the parliamentary groups in the Upper House. The next step, publication in the Official State Gazette, is expected the coming days.

This tax alert sets out some of the main changes introduced by the new Law that will affect the finance and insurance industries: (i) the amendment of the use and enjoyment rule for VAT, provided for in article 70.Two of the VAT Law; and (ii) the amendments to the limit on the CIT deductibility of finance expenses provided for in article 16 of the Corporate Income Tax Law. It also addresses the modifications introduced to the reporting obligations in respect of financial account information in the context of mutual assistance and cross-border tax planning arrangements (FATCA / CRS / DAC6).

The stated purpose of the Bill is to transpose into domestic legislation the main tax amendments introduced by Council Directive (EU) 2021/514 of 22 March 2021, amending Directive 2011/16/EU on administrative cooperation in the field of taxation (“DAC7”). These amendments include:

- The inclusion in General Taxation Law 58/2003 of 17 December 2003 (GTL) of an **exchange of information obligation on online platform operators** (with the subsequent exchange of such information by the tax authorities of Member States), effective as of 1 January 2023.
- The provision for **joint audits** as an additional tool for administrative cooperation between Member States, i.e. joint inspections by the Spanish tax authorities with those of one or more other Member States.

Nevertheless, this Bill includes several additional tax measures that will impact the finance and insurance industries. Specifically:

- Amendment of the VAT use and enjoyment rule.
- Amendment of the restrictions applicable to the CIT deductibility of finance expenses.
- Amendment of the reporting obligation regarding financial accounts within the mutual assistance framework (FATCA / CRS).
- Amendment of the reporting obligation regarding cross-border tax planning arrangements (DAC6).

Bill that affect the finance and insurance industries:

### Value Added Tax

Financial and insurance services rendered to businesses or entrepreneurs are excluded from application of the use and enjoyment rule, whereby services are deemed supplied within Spanish VAT territory if they are effectively used or enjoyed in Spanish territory (i.e. the Canary Islands are not considered Spanish VAT territory). This rule continues to apply to financial and insurance services rendered to customers other than businesses or entrepreneurs.

Nonetheless, in contrast to the general rule, the VAT Regulations provide that financial and insurance services which are deemed rendered outside of the European Community, Canary Islands, Ceuta or Melilla but which are effectively used or enjoyed within Spanish territory, and the customers of which are businesses or entrepreneurs acting as such, should be deemed rendered within Spanish territory. In the wake of this amendment, the use and enjoyment rule does not apply to financial and insurance services rendered to businesses or entrepreneurs acting as such, which are deemed supplied in the territory where the customer is located.

This amendment will likely affect the VAT deductibility scheme applicable to entities that provide financial and insurance services to businesses or entrepreneurs not established in the European Union.

Entities providing these services are thus advised to analyse the impact of the new use and enjoyment rule in this regard.

We summarise below tax measures introduced by the

## Corporate Income Tax

The term “operating profit” is amended, stating that income, expenses and yields not included in the CIT tax base (such as certain dividends or capital gains that may be included within operating profit and which enjoy a 95% tax exemption) should not be considered part of operating profit.

Until the implementation of this amendment, mortgage securitisation funds and asset securitisation funds were exempt from the restriction on the deductibility of finance expenses regulated in Article 16 of Corporate Income Tax Law 27/2014, of 27 November 2014. With the amendment, however, both mortgage securitisation funds and asset securitisation funds will be required to apply the restriction.

These amendments will be effective for tax periods beginning on or after 1 January 2024.

## Reporting obligations concerning CRS / FATCA and DAC6

The following common amendments are introduced with respect to CRS / FATCA and DAC6:

- Financial institutions and intermediaries are now required to report under the General Taxation Law (additional provisions twenty-two and twenty-three) rather than under Directive 2011/16/EU. The information to be reported on cross-border tax planning arrangements is not limited to information on transactions carried out between EU jurisdictions but includes that on transactions carried out with any other jurisdiction with which Spain has an international agreement for the exchange of information.
- A new reporting requirement is included whereby financial institutions and intermediaries must inform individuals who hold financial accounts or participate in cross-border arrangements that are reportable to another jurisdiction of the personal information to be reported to the relevant tax authority, so that such individuals may exercise their personal data protection rights.

This new obligation should be complied with well in advance of reporting the information to the tax authorities.

# Contacts

**Arturo Morando**  
Partner  
KPMG Abogados  
Tel. 91 456 34 00  
[amorando@kpmg.es](mailto:amorando@kpmg.es)

**Irene Cao**  
Partner  
KPMG Abogados  
Tel. 91 456 34 00  
[irenecao@kpmg.es](mailto:irenecao@kpmg.es)

**Pedro Ruiz**  
Partner  
KPMG Abogados  
Tel. 91 456 34 00  
[pedroruiz@kpmg.es](mailto:pedroruiz@kpmg.es)

**Guillermo Rodriguez**  
Director  
KPMG Abogados  
Tel. 91 456 34 00  
[guillermorodriguez@kpmg.es](mailto:guillermorodriguez@kpmg.es)

**Juan Londoño**  
Director  
KPMG Abogados  
Tel. 91 456 34 00  
[juandaniellondono@kpmg.es](mailto:juandaniellondono@kpmg.es)

**Nadia Batiukova**  
Director  
KPMG Abogados  
Tel. 91 456 34 00  
[nbatiukova@kpmg.es](mailto:nbatiukova@kpmg.es)

## KPMG's offices in Spain

### A Coruña

Calle de la Fama, 1  
15001 A Coruña  
T: 981 21 8241  
Fax: 981 20 02 03

### Alicante

Edificio Oficentro  
Avda. Maisonnave, 19  
03003 Alicante  
T: 965 92 07 22  
Fax: 965 22 75 00

### Barcelona

Torre Realia  
Plaça de Europa, 41  
08908 L'Hospitalet de Llobregat  
Barcelona  
T: 932 53 2900  
Fax: 932 80 49 16

### Bilbao

Torre Iberdrola  
Plaza Euskadi, 5  
48009 Bilbao  
T: 944 79 7300  
Fax: 944 15 29 67

### Girona

Edifici Sèquia  
Sèquia, 11  
17001 Girona  
T: 972 22 0120  
Fax: 972 22 22 45

### Las Palmas de Gran Canaria

Edificio Saphir  
C/Triana, 116 – 2º  
35002 Las Palmas de Gran Canaria  
T: 928 33 23 04  
Fax: 928 31 91 92

### Madrid

Torre de Cristal  
Paseo de la Castellana, 259 C  
28046 Madrid  
T: 91 456 3400  
Fax: 91 456 59 39

### Málaga

Marqués de Larios, 3  
29005 Málaga  
T: 952 61 14 00  
Fax: 952 30 53 42

### Oviedo

Ventura Rodríguez, 2  
33004 Oviedo  
T: 985 27 69 28  
Fax: 985 27 49 54

### Palma de Mallorca

Edificio Reina Constanza  
Calle de Porto Pi, 8  
07015 Palma de Mallorca  
T: 971 72 1601  
Fax: 971 72 58 09

### Pamplona

Edificio Iruña Park  
Arcadio M. Larraona, 1  
31008 Pamplona  
T: 948 17 1408  
Fax: 948 17 35 31

### San Sebastián

Avenida de la Libertad, 17-19  
20004 San Sebastián  
T: 943 42 2250  
Fax: 943 42 42 62

### Sevilla

Avda. de la Palmera, 28  
41012 Sevilla  
T: 954 93 4646  
Fax: 954 64 70 78

### Valencia

Edificio Mapfre  
Paseo de la Alameda, 35, planta 2  
46023 Valencia  
T: 963 53 4092  
Fax: 963 51 27 29

### Vigo

Arenal, 18  
36201 Vigo  
T: 986 22 8505  
Fax: 986 43 85 65

### Zaragoza

Centro Empresarial de Aragón  
Avda. Gómez Laguna, 25  
50009 Zaragoza  
T: 976 45 8133  
Fax: 976 75 48 96

[Privacy](#) | [Unsubscribe](#) | [Contact](#)

© 2023 KPMG Abogados S.L.P., a professional limited liability Spanish company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International Limited, a private English company limited by guarantee.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.