



Developments in the regulatory implementation of mandatory electronic invoicing in B2B transactions

Tax Alert



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Commencement of the period for public consultation on the regulatory implementation of the mandatory electronic invoicing.

As explained in our [tax alert](#) on the widespread implementation of electronic invoicing, Law 18/2022 of 28 December 2022, on the Creation and Growth of Companies (the “Creation and Growth Law”) introduces an obligation on entrepreneurs and professionals to issue, send and receive electronic invoices in all of their business-to-business transactions (“B2B transactions”).

The entry into force of this invoicing obligation was, however, subject to approval of the implementing regulations, recently released for **public consultation** by the Ministry of Economic Affairs and Digital Transformation (**[access the consultation text here](#)**).

Thus, the preliminary public consultation having concluded, the Draft Royal Decree implementing Law 18/2022 of 28 September 2022, on the creation and growth of companies as regards electronic invoicing between businesses and professionals has now been published, marking the commencement of a new period for filing submissions and proposed amendments. This period will end on 10 July 2023.

Once this period ends, the Draft Royal Decree must be submitted to the Council of State and ultimately approved by the Cabinet, following which it will be published in the Official State Gazette. With certain exceptions, the Regulations will enter into force twelve months after the date of their publication in the Official State Gazette. Nonetheless, it is worth recalling the provision under the Creation and Growth Law whereby the entry into force of this new obligation is subject to the requirement to obtain the relevant Community exception.

Moreover, approval of the Regulations will be the milestone on which the effectiveness of the new electronic invoicing obligation for B2B transactions depends, as such effectiveness will hinge on the date of such approval and the size, in terms of the annual revenues, of the company or self-employed worker required to issue electronic invoices (one or two years as of approval, depending on whether or not the invoicing volume of the affected company or professional exceeds Euros 8 million, respectively).

We summarise below the main features of the Draft Royal Decree:

- Entrepreneurs and professionals must issue and deliver electronic invoices for B2B transactions with respect to which they are required to issue invoices under the Invoicing Regulations. However, the obligation to issue an electronic invoice shall not apply where either of the two parties does not have its place of economic activity, domicile, main residence, or a permanent establishment to which the invoice is addressed in Spain.
- Certain exceptions to the electronic invoicing obligation are envisaged:
 - Simplified invoices.
 - Invoices issued voluntarily where there is no obligation to do so.
 - Other exceptions duly authorised by the Ministry of the Economy and Digital Transformation.
- Electronic invoices may be issued and received via two channels: (i) private platforms for the exchange of electronic invoices meeting the requirements set out in the Royal Decree; (ii) a public electronic invoicing solution, which must also act as an invoice repository and be managed by the State Tax Agency (“STA”). Alternatively, a combination of the two may be used.

Private operators will need to be able to interconnect with any other private electronic platform meeting the requirements established in the Royal Decree. Any issuers of electronic invoices opting not to use the public solution will also be required to submit a copy of their invoices to the public platform in the **Facturae syntax**.

Recipients of e-invoices that use private exchange platforms must disclose the electronic invoice entry point in all communications with other entrepreneurs or professionals and on their websites. Otherwise, it will be presumed that the entry point is the public solution.
- Electronic invoices must always use the current versions of the XML (UN/CEFACT), UBL (ISO/IEC 19845:2015), EDIFACT (ISO 9735) or Facturae syntax.

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- Electronic invoice recipients must inform the issuer within 4 calendar days (excluding Saturdays, Sundays and public holidays) of the following statuses:
 - Commercial acceptance or rejection of the invoice and the date thereof.
 - Full and effective payment of the invoice and the date thereof.

Finally, it should be noted that some of our EU neighbours (Italy, France) are already implementing electronic invoicing models with different characteristics.

The recipient's obligation to report the status of the invoice will enter into force upon publication of the Royal Decree in the Official State Gazette, with the following exceptions:

- in the case of **entrepreneurs** with annual revenues of less than Euros 6,010,121.04, the obligation will enter into force 36 months after publication of the Royal Decree in the Official State Gazette; and
 - in the case of **professionals** with annual revenues of less than Euros 6,010,121.04, it will enter into force 48 months thereafter.
- The information obtained by the STA from the public electronic invoicing system will enable it to ascertain the payment status of invoices and monitor compliance with the legislation on late payments.

Elsewhere, and in connection with this new obligation, the Ministry of Finance and Civil Service is currently developing the Regulations establishing the requirements for electronic invoicing systems and software with a view to guaranteeing the integrity, storage, accessibility, legibility, traceability and inalterability of the related records (see our [tax alert](#) on the Draft Regulations on invoicing software and records).

Both of the above regulations affect electronic invoicing processes and are closely interrelated. A close eye should thus be kept on their future eventual approval. Likewise the [Proposal for a Council Directive](#) amending Directive 2006/112/EC as regards VAT rules for the digital age, published on 8 December 2022, which provides that electronic invoicing will become the default system for invoicing, with the use of paper invoices reserved for cases specifically authorised by Member States, should be monitored.

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