

The Immediate Supply of Information in value added tax^{*}

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Abstract

The Immediate Supply of Information (*Suministro Inmediato de Información*) system is Spain's new system for managing value added tax and represents a significant advance in tax-related e-government, as well as an increase in the use of information technologies in interactions between the tax authorities and taxpayers.

This new system entails the keeping of record books via the State Tax Administration Agency website, by means of the virtually immediate submission of invoicing records. Taxpayers must forward invoicing details to the tax authorities via the Internet, and this information updates, almost in real time, the records kept for the tax.

Two goals lie behind its introduction. Firstly, to enhance taxpayer support by providing them, initially, with a range of tax data and, subsequently, with a draft tax return; and secondly, to provide greater and more efficient tax control by making quality information available very quickly.

Keywords

Value added tax, Immediate Supply of Information, invoicing, tax records, e-government

Topic

Taxation

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El Suministro Inmediato de Información en el impuesto sobre el valor añadido

Resumen

El Suministro Inmediato de Información es el nuevo sistema de gestión del impuesto sobre el valor añadido, que supone un importante avance en la administración electrónica en el ámbito tributario, así como una intensificación del uso de las tecnologías de la información en las relaciones entre la administración tributaria y el contribuyente.

Este nuevo sistema de gestión del impuesto sobre el valor añadido implica la llevanza de los libros registro a través de la sede electrónica de la Agencia Estatal de Administración Tributaria, mediante el suministro prácticamente inmediato de los registros de facturación. Los contribuyentes deben remitir a la administración tributaria los detalles sobre la facturación por vía electrónica, y con esta información se van configurando, casi en tiempo real, los libros registro del tributo.

Los objetivos de la introducción de este nuevo sistema de gestión tributaria son dos. Por un lado, la potenciación de la asistencia al contribuyente, al facilitarle una serie de datos fiscales, en una primera fase, y el borrador de la declaración del impuesto, en una segunda fase. Por otro lado, se pretende un mayor y más eficiente control tributario, al disponer de información de calidad en un tiempo muy reducido.

Palabras clave

impuesto sobre el valor añadido, Suministro Inmediato de Información, facturación, libros registro fiscales, administración electrónica

Tema

Fiscalidad

1. Introduction

The Immediate Supply of Information (*Suministro Inmediato de Información*, SII) is Spain's new system for managing value added tax (VAT) and represents a significant advance in tax-related e-government, as well as an increase in the use of information technologies in interactions between the tax authorities and taxpayers.

This new system entails the keeping of records via the State Tax Administration Agency (*Agencia Estatal de Administración Tributaria*, AEAT) website, by means of the virtually immediate submission of invoicing records. Taxpayers must forward invoicing details to the tax authorities via the Internet and this information updates the tax records, almost in real time.

Taxpayers covered by the SII system are obliged to keep records of invoices issued, invoices received, capital assets and certain intra-Community transactions via the AEAT website, by supplying invoicing records over the Internet.

This information is submitted online, specifically by means of web services based on the exchange of XML messages. The submission is structured with a common header on the holder of each record book, and information on the tax year and period in which said transactions are recorded. This header is accompanied by a block with the invoice content.

It is important to clarify the fact that this new VAT management system does not establish an obligation to send invoices to the AEAT, since what must be sent are the invoicing record fields specified in Order HFP/417/2017, of 12 May, governing the regulatory and technical specifications implementing the keeping of VAT records on the AEAT website.

With regard to the regulations applicable to this new VAT management system, it should be noted that, firstly, Law 34/2015, of 21 September, modifying the General Taxation Law (*Ley General Tributaria*, LGT), introduced changes to Article 29, on formal tax obligations, providing for, in Section Three, with regard to record books, the possibility of governing the obligation to keep said books by electronic

means through a regulatory standard. Article 200 was also modified to classify a delay in the duty to keep record books and submission via the AEAT website as a tax infringement. Pursuant to Final Provision 12 of the LGT, both precepts came into force on 1 January 2017.

Regulatory implementation of the SII system is contained, fundamentally, in Royal Decree (RD) 596/2016, of 2 December, for the modernisation, improvement and promotion of the use of electronic media in value added tax management.

Also applicable are the Resolution of 13 March 2017, of the AEAT Directorate-General, approving the standardised document for demonstrating representation of third parties in the procedure for the electronic submission of invoicing records via the AEAT website, and Order HFP/417/2017, of 12 May, governing the regulatory and technical specifications implementing the keeping of VAT records via the AEAT website.

Finally, Royal Decree 529/2017, of 26 May, modifying the Value Added Tax Regulation (RIVA) approved by Royal Decree 1624/1992, of 29 December, should also be borne in mind.

2. The goals of the new management system

The introduction of this new tax management system has two goals. Firstly, to boost taxpayer support by providing them, initially, with a range of tax data and, subsequently, with a draft tax return; and secondly, to provide greater and more efficient tax control, by making quality information available very quickly.

RD 596/2016 makes reference to a third motive: adaptation to come into line with new technologies. The preamble to this piece of legislation indicates that different forms of record keeping have seen deep-seated changes, from the time when the obligation to keep them was first established up until the present day, in accordance with the development of new technologies, progress in the use of electronic media by Spain's business community and the gradual implementation of e-invoicing. As such, there are currently only a residual number of businesses and professionals not using electronic or computerised means for keeping record books.

In this regard, said preamble notes that "it appears reasonable to assume that the substantial progress made

in the keeping of record books means that the system for keeping them can be transformed into a more modern one that brings the time of recording or accounting for invoices closer to the actual occurrence of the underlying financial transaction".

However, in our view, the main goal of the SII system is tax control. It is obvious that the purpose of the obligation to immediately provide information to the AEAT is to allow the tax authorities to carry out more thorough monitoring of the truthfulness of the self-assessment returns filed, in order to be able to prevent tax fraud by ensuring that the VAT falling due is actually declared in the period in which the taxable event has arisen.

The preamble to RD 596/2016 refers to this core goal of the SII system, when it indicates that control and prevention of tax fraud are priority objectives for the AEAT and that, to this end, there is a need to have sufficient, quality information and for it to be obtained as soon as possible. Nevertheless, said law points out that "there needs to be due balance between obtaining the information that is key to the proper conduct of review and investigation activities and the indirect costs that the supply thereof represents for taxable persons". In this regard, the new system for keeping records on the website "not only facilitates the fight against tax fraud, but also represents an improvement in the quality of data and the proper implementation of accounting practices, as well as a cost saving and greater efficiency that will benefit all economic operators".

In addition to this tax control objective, one should not forget the aforementioned enhanced support for taxpayers, who are provided, initially, with a range of tax data and, subsequently, with a draft tax return. This objective is also referred to in the preamble to RD 596/2016, when it states "the information obtained from the electronic submission of invoicing records shall be made available to those businesses or professionals with whom transactions have been carried out by those persons and undertakings that, either compulsorily or voluntarily, keep record books via the website, constituting a tool to assist taxpayers in preparing their value added tax self-assessment returns".

From the taxpayer's viewpoint, the SII system undoubtedly represents a considerable increase in indirect costs, particularly initially, during their efforts to come into line with the new regulations. We shall in due course see, as

said preamble to RD 596/2016 proclaims, whether or not there is “due balance between obtaining information that is key to the proper conduct of review and investigation activities and the indirect costs that the submission thereof represents for taxable persons”.

In addition to these disadvantages, there are also some advantages for the taxpayer, such as the aforementioned enhancement of taxpayer support. This involves, fundamentally, obtaining tax data, as taxpayers will have one “declared” register and another “comparative” register on the AEAT website, with the comparative information from third parties belonging to this system or the AEAT database. Taxpayers will be able to check this information prior to the deadline for filing their monthly VAT return. They will also have the possibility of correcting any errors made in submissions, without being required to do so by the AEAT.

Other advantages of the SII system for the taxpayer include, on the one hand, the availability of quality information in a sufficiently short period of time in order to speed up the VAT management system. On the other, there is the reduction in the requests for information made by the AEAT, as many of the current requests are for record books, invoices or information contained therein to check certain transactions.

Some other possible advantages of the new SII for taxpayers are the modernisation and standardisation of the way that VAT records are kept, the reduction in certain formal obligations, by abolishing the requirement to file forms (*Modelos*) 347, 340 and 390, the reduction in repayment periods, with the AEAT receiving information on transactions almost in real time and in more detail and, finally, the fact that taxpayers included in the new system will see the deadline for filing and payment of VAT self-assessment returns extended by ten days.

3. Subjective scope

According to Articles 62.6 and 71.3.5 of the RIVA, the SII system is compulsory for businesses, professionals and

other taxable persons whose settlement period coincides with the calendar month: large companies (with a turnover of more than 6,010,121.04 euros in the preceding year), VAT groups and those registered in the REDEME (the monthly VAT refund register).

It may also be used voluntarily by those exercising the option in the associated tax registration form, in which case their returns will be monthly.

With regard to large companies, it is extremely important to correctly establish the volume of transactions at 31 December. It is vital to calculate said amount properly in the first few days of each year, without waiting until the deadline for filing the self-assessment return for the last period of the preceding year.¹

With regard to the SII system's subjective scope, it should be noted that RD 596/2016 did not expressly exclude those taxpayers applying the special simplified VAT scheme from its scope of application. In other words, it was interpreted that said taxable persons could opt to apply the SII system. Such a possibility was not logical given the uniqueness of the special scheme and the modifications that were to take place from 2018 on, such as the reduction in the income and expenditure limit to be included within the objective scope of application of the special scheme.

Therefore, RD 529/2017, of 26 May, modifying the RIVA, added a fifth transitional provision to this regulation, governing the option for keeping records via the AEAT website on the part of taxpayers under the simplified scheme for 2017. It states: “notwithstanding the provisions of Articles 62.6 and 68 bis of the RIVA, taxpayers under the simplified scheme may not opt to keep their record books via the AEAT website, effective from the 2017 tax year”.

Accordingly, taxpayers taking exclusive advantage of the special simplified scheme in 2017 may not opt to apply the SII system. However, given the above wording, they may be able to do so for 2018, unless a new exception is provided for before the end of 2017.

1. As Longás Lafuente quite rightly points out (2017a, p. 52), given that the information must be forwarded within four calendar days of the invoice being issued, any business or professional with doubts regarding the volume of transactions in the immediately preceding tax year must calculate this in the first few days of the calendar year, with regard to the invoices to be issued in said days, as there is no requirement to supply the information if it is below the amount indicated in Article 121 LIVA, unless voluntarily forming part of the SII.

Additionally, we should query what happens with those taxable persons not established in the tax's territory of application. In this regard, it should be remembered that businesses and professionals, or taxable persons, not established in the territory of application of the tax that have a duty to file monthly self-assessment returns, have an obligation to keep VAT records via the AEAT website. Nevertheless, it is unclear whether this obligation concerns all the transactions of non-established businesses and professionals or only those located in the tax's territory of application.²

It is also worth analysing what happens to those taxable persons in the special agriculture, livestock and fishery scheme. Those exclusively carrying on activities included in this special scheme only need to keep the records associated with their special scheme and have no duty to provide information thereon via the SII system, as Article 62.6 of the RIVA only makes reference to the record books listed in Article 47.2 of that same regulation. Therefore, these businesses cannot use the SII system, which is logical given that the purpose of taxable persons using this special scheme is to simplify tax management for them.

Another similar case is that of those taxable persons in the additional surcharge (*recargo de equivalencia*) scheme. Taxable persons in this scheme have no duty to keep records for VAT purposes. Therefore, if a taxable person exclusively carries on activities covered by the special additional surcharge scheme, they cannot opt into the SII system, for the same reason as with the special agriculture, livestock and fishery scheme: simplification of tax management.

Taxable persons exclusively carrying on activities that are exempt from or not subject to VAT do not fall within the subject scope of application of the SII system in cases where the taxable person is not granted the right to deduction, pursuant to Articles 92 and 94 of the Law on Value Added Tax (*Ley del Impuesto sobre el Valor Añadido*, LIVA), as they do not have to file self-assessment returns for the tax. On the other hand, businesses or professionals carrying on exclusively exempt activities or transactions that do give

rise to the right to make deductions (such as exports or the intra-Community supply of goods), do have the obligation to file self-assessment returns for the tax, and so do fall within the subjective scope of application of the SII system. Therefore, they could constitute taxable persons with a duty to supply information on record books via the AEAT website (if they fall within one of the contemplated categories) or may voluntarily use said system.

Finally, with regard to those businesses or professionals commencing an economic activity subject to VAT, in the tax year in which said activity commences, only those taxable persons with a monthly return period will be required to supply information on their records via the AEAT website. Furthermore, and again in the first year of the carrying on of the activity, taxable persons that must apply this system exclusively on the basis of the volume of transactions are excluded from this obligation, as the relevant figure (the preceding year's turnover) is not available in the first year of operation. The SII system shall also apply to businesses or professionals under the monthly repayment scheme, and to those taxable persons that voluntarily seek to form part of the SII system, opting to do so when filing their commencement of activity return, with said option being applicable in the current calendar year.

4. The option for web-based keeping of record books

Pursuant to Article 68 bis of the RIVA and Transitional Provision (TP) 1 of RD 596/2016, the option for the keeping of records in electronic form via the AEAT website must be exercised during the month of November prior to the start of the calendar year in which it must take effect, by filing the relevant tax registration form (form 036) or when filing the commencement of activity return, with effect, in this last case, in the current calendar year.

The option for applying the SII system from 1 July 2017 on must be exercised during the month of June. This option shall be deemed to be extended to subsequent years unless

2. In Longás Lafuente's opinion (2017a, p. 55-56), it is a question of ascertaining the extent to which the national legislature can impose an obligation that affects the entirety of a non-established taxable person's economic activity, with a clash in this regard between the anti-fraud objective of the SII system, which would entail a general duty of submission, and that of territorial tax-raising powers, which establishes that this obligation is limited to those transactions located in the tax's territory of application, and that the latter should be the expected conclusion, without prejudice to the collaboration procedures that may arise between EU Member States in the case of companies established in the territory of another Member State.

renounced, and the obligations of the SII system must be fulfilled at least in the opt-in year.

Notification of renouncement must be made by filing the tax registration form (form 036) during the month of November prior to the start of the calendar year in which it must take effect. Exclusion from REDEME shall entail exclusion from the SII system with effect from the first day of the return period in which the exclusion resolution has been notified, unless the settlement period remains monthly.

Removal from the special scheme for groups of undertakings shall give rise to removal from the SII system with effect from date of occurrence of the former, unless the settlement period remains monthly.

As noted above, taxable persons obliged to apply the new SII system from 1 July 2017 include those (whether a large company or not) that file their VAT self-assessment returns monthly after registering with the REDEME, as well as those taxable persons applying the special scheme for groups of undertakings. Since the publication of RD 596/2016, the tax authorities had been indicating that they would be establishing an extraordinary period for de-registering from the REDEME and for renouncing application of the special scheme for groups of undertakings.

Following publication of Order HFP/417/2017, of 12 May, modifying the 036 and 037 tax registration forms, there was a need to set up a period prior to the entry into force of the SII system to exercise the above options (using the 036 form). So, RD 529/2017, of 26 May, modifying the RIVA, governs both options, adding TP 4 to the RIVA, entitled "Extraordinary de-registration from the monthly repayment register and extraordinary renouncement of the application of the special scheme for groups of undertakings during 2017".

Thus, taxable persons registered with the REDEME governed by Article 30 of the RIVA may request voluntary de-registration therefrom, filing an application up to and including 15 June 2017, with effect from 1 July 2017.

For their part, undertakings applying the special scheme for groups of undertakings governed by Chapter IX of Title IX of the LIVA may renounce application thereof by submitting said renouncement on or before 1 July 2017. By the same deadline, undertakings in the special scheme for groups of undertakings may submit an application for de-registration

from REDEME, which shall be submitted by the parent undertaking and must refer to the entirety of the group undertakings to which the special scheme applies.

5. Content of the information to be supplied

As established by Articles 62.6, 63.3 and 64.4 of the RIVA, undertakings included in the SII system must include additional information to that contemplated for traditional records.

With regard to the record book of invoices issued: the type of invoice (complete or simplified, invoices issued by third parties and receipts from the special agriculture, livestock and fishery scheme, amongst others); identification of record rectification; description of the transaction; rectifying invoice (identified as such, reference to the rectified invoice or details modified); replacement invoices (reference to the invoices replaced or details replaced); invoicing by recipient; reverse charges; special schemes (travel agents, used goods, cash accounting, groups of undertakings, investment gold); settlement period of transactions; indication of transaction that is not subject to or exempt from VAT; AEAT invoicing agreement, if applicable; and any other information of tax importance established by means of ministerial order.

With regard to the record of invoices received: the receipt number is replaced by the invoice number and series; identification of record rectification; description of the transaction; invoicing by recipient; reverse charges; intra-Community acquisition of goods; special schemes (travel agents, used goods, cash accounting, groups of undertakings); amount of deductible VAT for the return period; return period in which transactions are recorded; accounting date and customs document number in the case of imports and any other information of tax importance established by means of ministerial order.

The electronic supply of invoicing records shall be carried out via the AEAT website using web services or an electronic form with the record fields approved in the relevant ministerial order.

In this regard, one should bear in mind the provisions of Order HFP/417/2017, of 12 May, governing the regulatory and technical specifications implementing the keeping of VAT records via the AEAT website. The purpose of this ministerial

order is to implement the modifications required for the proper implementation of RD 596/2016. As such, this Order HFP/417/2017 contains the record fields to be provided in the VAT record books and the form on which the information is to be supplied via the AEAT website.

With regard to the content of the records of invoices issued, it establishes the types of invoice recorded: complete, simplified, rectifying, issued to replace simplified invoices or summary entry. It also indicates which of the transactions of tax importance that had previously been notified via forms 347 or 340 need to be identified: travel agencies' invoices, pursuant to Additional Provision (AP) 4 of the Regulation, governing invoicing duties, business premise leasing transactions, collection of professional fees on behalf of third parties, amounts received on disposals of properties subject to VAT, amounts received in cash of more than 6,000 euros per year and insurance undertaking transactions for which no invoice is issued. These last two transactions shall be notified annually.

With regard to the content of the records of invoices received, it establishes the types of invoice recorded: complete, simplified, summary entry, customs document and supporting accounting documents. Identification of the invoice received as rectifying or replacing simplified invoices is optional for the recipient. It also indicates which of the transactions of tax importance that had previously been notified via forms 347 or 340 need to be identified: business premise leasing transactions, acquisitions of goods or services outside of any business or professional activity carried out by public bodies, purchases from travel agencies that invoice according to AP 4 of the Regulations governing invoicing obligations, and transactions with insurance undertaking for which no invoice is issued. These last two transactions shall be notified annually.

Additionally, Annex I to Order HFP/417/2017 includes the record fields for which information should be provided, pursuant to the implementing provisions thereof and the provisions of Articles 63 to 66 of the RIVA. The format and design of the informative messages to be sent shall be in accordance with the fields set forth in Annex I and their format and design shall be those recorded on the AEAT website.

Finally, with regard to the submission procedure, Order HFP/417/2017 provides that this can be done by means of web services based on the exchange of messages in XML format.

Each of these messages shall contain a maximum number of invoicing records per submission. This maximum number shall be defined on the AEAT website, and currently stands at 10,000, although an unlimited number of submissions may be made. In this case, submissions can only be made with an electronic certificate.

Information may also be supplied using a web-based form. In this case, the individual submission of invoicing records shall be permitted, and submissions may be made with an electronic certificate or, if applicable, the Clave PIN secure access system (by a natural person who is the owner of the same or their representative).

It should also be noted that RD 596/2016 establishes that simplified invoices (issued or received) may be grouped together, provided that certain requirements are met and the invoicing record for the associated summary entry is submitted.

Lastly, with regard to the content of the information to be supplied, it should not be forgotten that the AEAT will provide comparison information for invoicing records submitted, making the information obtained from those customers and suppliers using the SII system available to taxpayers. Therefore, as noted above, the system will provide a tool to assist in the preparation VAT returns and payments.

Therefore, as is currently the case with Spanish personal income tax (IRPF), the aim is to provide tax information so that taxable persons may use this for filing their VAT self-assessment returns. Taxable persons applying the SII system shall receive tax information on the AEAT website and will have one "declared" record book and another "comparative" one, with the comparative information from third parties belonging to the system or the AEAT database. As noted above, in our opinion this is the main benefit of adopting the SII system for the taxpayer.

6. Deadlines for electronic submission of entries

Article 69 bis of the RIVA, the Sole AP and TP 4 of RD 596/2016 govern the deadlines for electronic submissions in detail.

For invoices issued, the deadline is four calendar days from the date of issue, except for those issued by the recipient or by a third party, in which case the deadline is eight calendar days. In both cases, these must be submitted before the 16th of the month following that in which the taxable event arises.

For invoices received, the deadline is four calendar days from the date of the accounting entry for the invoice or the document upon which the amount paid is placed on record by customs in the case of imports and, in any case, before the 16th of the month following the settlement period in which the transactions have been included.

With regard to certain intra-Community transactions (the shipping or receipt of movable tangible property for temporary use or for the writing of expert reports, repairs or works thereon), the deadline is four calendar days from the time of commencement of shipping or transport or, when appropriate, from the moment of receipt of the goods.

With regard to transactions subject to the special cash accounting scheme, the general deadlines shall be applied, without prejudice to the fact that the information must be submitted at the time of full or partial collection or payment for the transactions. Record rectifications must be submitted before the 16th of the month following the end of the return period to which they relate. And, finally, as far as the register of capital assets is concerned, all entries shall be submitted by the submission deadline for the last settlement period.

It should be noted with regard to the deadlines for submitting all entries, that Saturdays, Sundays and national bank holidays are excluded. It should also be borne in mind that, for the second half of 2017, the aforementioned four-day deadline is extended to eight calendar days.

One should also remember that taxable persons applying the SII system from 1 July 2017 shall have an obligation to submit their invoicing records for the first half of 2017 before 1 January 2018.

Finally, a logical exception is contemplated to the supply of information referring to the first half of 2017. This is for taxable persons registered with the monthly repayment register (REDEME). For them, the obligation to submit invoicing records for the first half of 2017 shall be deemed met, in that they have an obligation to submit the information return referred to in Article 36 of the General Regulations

on Tax Management and Inspection (*Reglamento General de Gestión e Inspección Tributaria*, RGGIT) during the period from 1 January to 30 June 2017.

7. Modification of formal obligations

With regard to the deadline for filing self-assessment returns and making payments, Articles 61 ter.3 and 71.4 of the RIVA state that, for businesses using the SII system, it is extended until the first 30 calendar days of the month following the monthly payment period, or until the last day of February in the case of the assessment return/payment for the month of January.

With regard to registration for the tax, Articles 9.3 q and r, 10.2.h, p and q of the RGGIT incorporate the option of keeping VAT records via the SII system and the option of complying with the obligation to issue invoices through the supplier or through a third party, as well as the revocation thereof, amongst the reasons for submitting form 036 for registration, modification and de-registration in the Register of Businesses, Professionals and Withholders.

Additionally, as noted above, certain formal obligations have been abolished. Articles 32.f and 36.1 of the RGGIT and TP 2 of RD 596/2016 release taxable persons applying the SII system from filing certain informative returns: the declaration of transactions with third parties (form 347), from the period relating to 2017, and the informative return with the content of records (form 340) for taxable persons registered with the REDEME. This abolishment will affect returns for information to be submitted after the period for July 2017. Pursuant to the Explanatory Memorandum to RD 596/2016, the annual VAT summary return (form 390) should be added to these two returns.

With regard to the abolishment of the requirement to file form 340, it should be noted that it remains a requirement for taxable persons subject to the Canaries' Indirect General Tax (*impuesto general indirecto canario*, IGIC), as the system for keeping books via the AEAT website does not affect them. Therefore, only taxable persons subject to the IGIC recorded in the REDEME and governed in Articles 9 and 10 of the regulations for the management of taxes arising from the Canaries' economic and tax system, approved by Decree 268/2011, of 4 August, are obliged to submit an information

return with the content of the records referred to in Article 49.1 of said Decree.

This abolishment of certain formal obligations is presented in the preamble to RD 596/2016 as a substantial reduction in the administrative burden. Specifically, it indicates that the supply of information from records via the AEAT website “will allow for a substantial reduction in the administrative burden associated with the periodic supply of information affecting these persons and undertakings”. Nevertheless, in our opinion, it cannot be considered an advantage or compensation for those subject to the SII system as, in reality, it is the result of the implementation of the new management system, which makes it unnecessary to duplicate the supply of information via the aforementioned information returns. Furthermore, it seems paradoxical to present the SII as a system that reduces administrative burdens when it is clear that it, in fact, increases them to a point that may be considered disproportionate for some.

Another modification to formal obligations introduced with the implementation of the SII system is associated with delays due to causes not attributable to the tax authorities. Pursuant to the provisions of Article 104.j of the RGGIT, newly added as constituting a breach of is a delay in the obligation to keep VAT record books via the AEAT website. The delay shall be calculated from the beginning of proceedings until the date of submission or registration.

Additionally, a new provision is established with regard to invoicing of transactions by recipients or by third parties. Pursuant to Article 5.1 of RD 1619/2012 and TP 3 of RD 596/2016, persons and undertakings applying the SII system and that have opted to comply with the obligation for the issuing of invoices by the recipient or a third party must notify by means of the tax registration form (form 036) said option, the date from which they are exercising it and, where appropriate, its renouncement and the effective date. This notification can be provided from June 2017 onwards.

Lastly, with regard to the deadline for forwarding invoices, as established in Article 18 of RD 1619/2012 and FP 2 of RD 596/2016, from 1 January 2017 onwards, should the recipient of the transactions be a business or professional, the invoice

must be forwarded before the 16th of the month following that in which the taxable event arises.

8. Penalties

As noted above, Law 34/2015, of 21 September, modifying the General Tax Law, has amended Article 200, with effect from 1 January 2017, to classify a delay in the duty to keep and supply records via the AEAT website as a tax infringement.

Specifically, a new letter “g” has been added to Article 200.1 of the LGT, which provides that a tax infringement is caused by “delay in the obligation to keep records via the State Tax Administration Agency website through the submission of invoicing records by the deadlines established in regulations”.

Additionally, a new paragraph is added to Article 200.3 of the LGT, which establishes that “delay in the obligation to keep record books via the State Tax Administration Agency website through the submission of invoicing records by the deadlines established in regulations shall be punished with a proportional pecuniary fine of 0.5 per cent of the amount of the unrecorded invoice, with a minimum quarterly amount of 300 euros and a maximum of 6,000 euros”.

One author has rightly noted several issues raised by this new type of infringement and its associated penalty.³ On the one hand, the class of infringement has given rise to the new wording of Article 29.3 of the LGT, establishing the possibility of governing by regulatory norm the obligation of keeping records by electronic means. However, it does not refer to the fact that they must be kept via the AEAT website, as stated by regulatory norm. This may, therefore, give rise to problems of legality, due to the configuration of a class of infringement by reference to a regulatory norm.

On the other hand, Article 200.1.g of the LGT makes reference exclusively to the “obligation” of keeping record books via the AEAT website, which thus raises doubts as to whether the violation can be committed by those who have voluntarily opted into the SII system.

Furthermore, said Article 200.1.g of the LGT makes no distinction on the basis of the length of the delay in providing

3. See the detailed comments made in this regard by Longás Lafuente (2017b, p. 92-93).

the information, such that one day's delay will be enough for the infringement to have been deemed committed. This asks a great deal of businesses and professionals subject to the SII system, with regard to formal rather than substantive obligations, and could be regarded as somewhat disproportionate.

Another related controversial matter is the degree of inconsistency between the infringement class, which refers to the keeping of record books, whilst the penalty involves the levying of a fine for each invoice that should be recorded. In this regard, it should not be forgotten that there are entries in the records that are not based on invoices, such as the record of capital assets or that of certain intra-Community transactions.

Lastly, Article 200.3 of the LGT makes reference to a quarterly minimum, which raises doubts as to whether the infringements shall be committed as a result of quarterly infringement of the obligation. Therefore, it could be asked what period is to be borne in mind for classifying infringing conduct, particularly considering that businesses or professionals under the SII system have the obligation to file monthly self-assessment returns.

9. Conclusions

The SII system represents a significant step in tax-related e-government and a significant increase in the use of information technologies in interactions between the tax authorities and taxpayers. This new management system entails the keeping of record books via the AEAT website, by means of the virtually immediate submission of invoicing

records. Taxpayers must forward invoice details to the tax authorities via the Internet, and, almost in real time, this information updates the tax records.

It is important to note that the SII system does not involve sending the actual invoice to the AEAT, but rather specific information contained therein. In this regard, it is worth highlighting that the SII is not designed as a new formal obligation, but rather a new system for putting into effect an already existing one, that of keeping VAT records.

Although the introduction of this system is intended to enhance the support available for taxpayers, by providing them, initially, with a range of tax data and, subsequently, with a draft tax return, it should not be forgotten that its main objective is one of tax control. It is clear that the aim of the obligation to supply immediate information to the AEAT is to allow the tax authorities to more exhaustively monitor the truthfulness of the self-assessment returns filed, so as to be able to prevent or reduce tax fraud.

However, the implementation of this new tax management system represents a clear increase in the administrative burden on businesses and professionals under the SII system. Furthermore, the penalty system established is very strict with regard to compliance with formal rather than substantive obligations. All of this may give rise to doubts relating to compliance with the principle of proportionality. Furthermore, this increase in the administrative burden for businesses and professionals could work against the necessary simplification and reduction of formal duties, which already represent, with regard to this tax, a great effort, both financially and in terms of the dedication of human resources.

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