



# Widespread adoption of electronic invoicing

Tax Alert



October 2022

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**The Creation and Growth Law extends the obligation to issue, submit and receive electronic invoices in business dealings to all traders and professionals, referring affected parties to the future implementing regulations. The electronic invoicing obligation will be mandatory for large corporations from the outset, with smaller enterprises given longer to adapt.**

Spain's "Creation and Growth Law" ([Law 18/2022 of 28 September 2022, for the Creation and Growth of Companies](#)) was published in the Official State Gazette on 29 September 2022. This new Law is introduced, inter alia, with a view to expediting the creation of companies, while simultaneously fostering their growth, eliminating obstacles to the pursuit of economic activities, combatting late payments and facilitating access to financing.

Among the mechanisms it includes for combatting late payments, the Creation and Growth Law imposes an obligation on traders and professionals to issue, send and receive electronic invoices, in all of their business dealings with other traders and professionals, while simultaneously introducing a specific penalty regime for breach of this obligation.

More particularly, the implementation across the board of electronic invoicing and the related penalty regime are introduced by means of the amendment of article 2 bis of Law 56/2007 of 28 December 2007, on Measures to Promote the Information Society. While not fiscal in nature, this Law will doubtless have far-reaching tax-related effects.

The regulations that are to implement the new Law must be passed within six months of the date of its publication in the Official State Gazette (i.e. by 29/03/2023) and its entry into force will be phased, based on the revenues of the relevant traders and professionals.

We summarise below the implications of this new obligation, the requirements affecting electronic invoices, the penalty regime approved for cases of non-compliance and other more general aspects.

## What does the new electronic invoicing obligation entail?

In a bid to combat late payments in business activities, while facilitating access to information on payment deadlines between companies, the Creation and Growth Law **advocates the implementation, across the board, of electronic invoicing**, extending to all traders and professionals the obligation to issue, send and receive electronic invoices **in their business dealings**.

Elsewhere, **the service providers** referred to in article 2.2 of the Law on Measures to Promote the Information Society will also be required to issue and send electronic invoices in their **dealings with private individuals**, where such individuals agree or have expressly requested to receive them, irrespective of the size of their workforce or annual volume of business.

Exceptionally, the requirement to issue electronic invoices will only apply to travel agencies, transport services and retail activities where the relevant contract is entered into electronically.

These service providers must grant access to the programs necessary to enable recipients to read, copy, download and print invoices, free of charge and with no need to use other sources. Recipients will have up to four years to request a copy of invoices, at no extra cost, but may not require the issuer to use any given solution, platform or provider.

To this end, **electronic invoicing service providers** must ensure that the technological solutions and platforms they offer permit cost-free interconnection and interoperability with other electronic invoicing solutions. This also applies to any electronic invoicing platforms and solutions owned by the companies that issue and receive the invoices in question.

## Requirements for electronic invoices

Electronic invoices must meet the requirements set out in the specific invoicing regulations, while the computer systems and programs used to manage electronic invoicing processes must meet the requirements set out in article 29.2.j) of the General Taxation Law and its implementing regulations, currently pending approval.

The [Draft Implementing Regulations](#) were published by the Ministry of Finance in the first quarter of 2022 setting out:

- the technical requirements and specifications to be met by all computer systems and programs used by those engaging in economic activities, to comply with the invoicing obligations; and

- the standardisation of formats, with a view to ensuring the integrity, retention, accessibility, legibility, traceability and inalterability of the relevant records.

According to the draft regulations, they will be enforceable in 2024 for traders and professionals who do not use the Immediate Supply of Information system (SII per its Spanish acronym) to keep their invoicing records.

It remains to be seen how the new invoicing obligation envisaged in the Creation and Growth Law will fit in with the requirements provided for in the Regulations on Invoicing Systems and Software and the Format of Invoicing Records.

### Specific penalty regime

With this new obligation, the Law introduces two new infringements associated with failure to comply, together with their corresponding penalties:

1. Firstly, the infringement whereby companies that are required to do so fail to offer users the option to receive electronic invoices or to grant former customers access to the relevant invoices.

The penalty in this case will consist of a warning or fine of up to Euros 10,000 and will be adjusted, *inter alia*, according to the degree of negligence involved in, continuity of or persistence with the relevant breach, the damage caused, recurrence of the breach, the volume of revenues of the person responsible, etc. (per article 19.2 of Law 6/2020 of 11 November 2020, regulating Certain Aspects of Electronic Trust Services).

2. Secondly, the breach by companies offering services of particular financial relevance to the general public, of the other obligations provided for in article 2.1 of the Law on Measures to Promote the Information Society.

This provision concerns the obligation to provide a secure means of electronic communication with customers that allows them to: contract services, supplies or goods electronically, consult data or submit complaints, incidents or suggestions, and perform formalities associated with the rights of access, rectification and erasure, on the terms provided for in the personal data protection regulations.

Here again, the related penalty will consist of a warning or fine of up to Euros 10,000.

### Regulatory implementation

As noted above, this new Law is to be implemented by means of regulations that must be approved within the six months following the publication of the Creation and Growth Law in the Official State Gazette (i.e. by 29/03/2023).

It will fall to the Ministries of Economic Affairs and Digital Transformation and Finance and Civil Service to define:

- the technical and information-related requirements to be included in the electronic invoice with a view to verifying the payment date and ascertaining average payment periods.
- the minimum requirements as regards interoperability between electronic invoicing technological solution providers; and
- the requirements as regards the security, control and standardisation of the computer devices and systems used to generate documents.

To this end, regard must be had to the current status of use of structured electronic invoices based on global standards, in order to minimise the compliance and adaptation efforts required of companies already using them.

Lastly, the following are expected to be accepted as valid:

- the list of syntaxes set out in Commission Implementing Decision (EU) 2017/1870 of 16 October 2017 on the publication of the reference of the European standard on electronic invoicing; and
- the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council.

### Entry into force

With the exception of certain provisions, the Law will enter into force twenty days after its publication. For its part, the timing of effectiveness of the specific electronic invoicing obligation will be subject to approval of the regulations. Specifically, this new obligation will become effective:

- one year after approval of the regulations implementing the interoperability requirements, in the case of traders and professionals with annual revenues exceeding eight million Euros; and
- two years after approval of the regulations implementing the interoperability requirements, for all other traders and professionals.

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Entry into force will thus be staggered, as from the date of approval of the implementing regulations and according to the annual billings of the company or self-employed worker required to issue electronic invoices.

Finally, it should be noted that the entry into force of this new obligation is subject to the securing of the Community exception in respect of articles 218 and 232 of Council Directive 2006/112/EC of 28 November 2006, on the common system of value added tax.

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