

**Bloomberg
BNA**

TAX PLANNING INTERNATIONAL INDIRECT TAXES

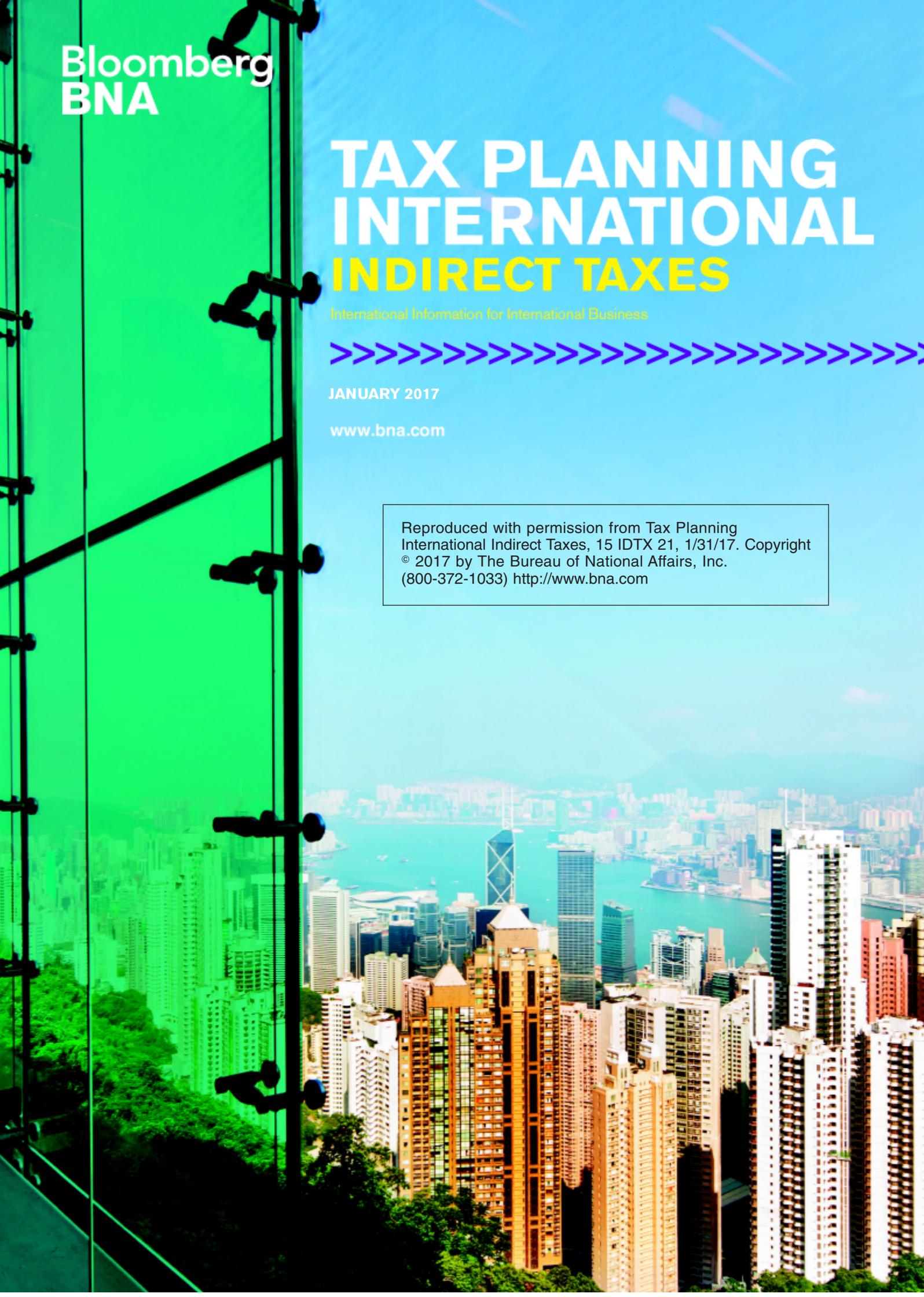
International Information for International Business



JANUARY 2017

www.bna.com

Reproduced with permission from Tax Planning International Indirect Taxes, 15 IDTX 21, 1/31/17. Copyright © 2017 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>



“Immediate Supply of Information:” New VAT E-Compliance Report Approved

Javier Galván Falcón and Ignacio Sandino Egea
Diligens Tax Consulting SL, Spain

The “Immediate Supply of Information” project, intended to help in the fight against VAT fraud, has now been approved by the Spanish Government. This article discusses the implications for businesses.

The Spanish tax authorities have been working for a long time on the development and implementation of an advanced online report of information to help in the fight against tax fraud in VAT. The project, entitled “Immediate Supply of Information” (or “SII” according to its Spanish acronym), had been started by 2015 and was initially scheduled to come into force by the beginning of 2017, with a transitional and testing implementation period during 2016.

However, due to the unusual policy circumstances raised by the 2016 elections to the Spanish Government, which led to the failure to form a government, all legislative proposals were left on standby for a while, the SII among them. Finally, with the government elected in mid-2016, this project has been restarted, to be definitively approved by the end of December 2016.

Considering the important technological development that this project means for companies, the first draft of the legislation (end of 2015) was proposed with a one-year transitional period in order to give enough time for taxpayers to adapt their IT systems and to implement the necessary resolutions to comply with the reporting obligations, so that by January 2017 it would be mandatory to follow the online system. However, this is when the first controversy arises, since, in the definitive wording of the law which approves the SII, the one-year transitional

period has been amended to a shorter six-month period: in other words, taxpayers have been surprised by a coming into force date of July 2017, instead of the expected date of January 2018.

There is no doubt that the Spanish tax authorities wish to be in the forefront of European Union (“EU”) countries in connection technological development for VAT compliance, in line with the digital transformation of the global economy, no matter what consequences or difficulties taxpayers may face to meet these new requirements. Based on the fight against VAT fraud, and arguments for global digital transformation, the tax authorities request the provision of detailed information for all transactions carried out by taxpayers almost in real time—which is the innovative aspect of the SII project.

I. Content and Implications of the SII

What is the basis of the SII and what are the implications for taxpayers? At present, as is usual in any EU Member State, taxpayers are obliged to keep VAT records, separately from the accounting records, where they must register all the transactions carried out from a VAT perspective, which must support the figures reported in the regular VAT returns. In Spain, these VAT records comprise the VAT ledgers of outgoing and incoming invoices, VAT ledger of capital goods and VAT ledger of specific intracommunity

Javier Galván Falcón and Ignacio Sandino Egea are Partners with Diligens Tax Consulting, Spain

transactions, which must be kept by taxpayers and provided to the tax authorities upon request.

However, with the implementation of the SII *the information related to these VAT ledgers* (not the invoices) must be electronically registered online on the website of the Spanish tax authorities, either through a direct communication between the taxpayer's system and the tax authorities' website or through an .xml form submitted. Therefore, the immediate effect on taxpayers is that VAT ledgers will be directly provided to the tax authorities without any request from them. The purpose of the e-submission is that the tax authorities can be in possession of all the information related to the transactions affecting VAT carried out by taxpayers, with enough time to audit the VAT returns submitted and, if applicable, to proceed with the refund of the VAT credit.

In this regard, even though all taxpayers are obliged to keep VAT ledgers as provided by law, this new request of submission does only affect taxpayers who are making monthly filings. The Spanish VAT Act establishes the natural quarter as the settlement period for VAT, except for certain cases where the settlement period changes to mandatory monthly filings—for taxpayers deemed large entities (those whose yearly turnover exceeds six million euros), taxpayers which are under the voluntary monthly VAT refund scheme and taxpayers which are part of a VAT group. However, although this new e-reporting obligation is mandatory for these taxpayers, any taxpayer who is interested in following this e-compliance system is also entitled to voluntarily opt for it, in which case monthly VAT filings will be mandatory.

Why may a taxpayer be interested in voluntarily opting for this e-reporting system? It must be noted that the purpose of the new regulation is to facilitate the VAT settlement to taxpayers, so at the moment of producing the VAT return they will find in the tax authorities' website two type of VAT ledgers: on the one hand, a declared VAT ledger according to the information reported by the taxpayer, and on the other hand a checked VAT ledger according to the information reported by other taxpayers. The two types of ledger will have been compared by the tax authorities, finally resulting in a VAT settlement that can be accepted by the taxpayer and which will speed up the VAT refund process in each case.

Moreover, taxpayers under this system are no longer obliged to file the annual VAT summary (Spanish Form 390), the recapitulative statement of transactions with third parties (Spanish Form 347) and (only for taxpayers under the monthly VAT refund scheme) the statement of transactions included in the VAT ledgers (Spanish Form 340). Together with the removal of these information forms, the deadline for filing the regular VAT returns is extended to 30 calendar days of the month following the one to which the VAT return refers, rather than the 20 calendar days deadline currently in force; that is, ten additional days are provided for filing purposes.

II. Information to be Provided

Regarding the content of the SII, the second controversy arises in connection with the information to be provided to the tax authorities, in so far as this is not

limited to the data currently provided in the VAT Regulation as content of the VAT ledgers, but is extended to further data which makes the process more difficult. So, besides the information concerning the VAT ledgers, such as invoice number, date of issue, date of transaction, identification of the supplier or the client, taxable base, VAT rate and VAT quota, the taxpayer must provide the following information:

- type of invoice (regular, simplifying or rectifying);
- rectifying registry (if applies);
- description of the transaction;
- identification of rectified invoice (if applies);
- identification of substituted invoice (if applies);
- special VAT schemes (if applies);
- settlement period;
- non subject or VAT exempt transaction (if applies);
- invoicing by the recipient (if applies);
- reverse charge (if applies);
- agreement with tax authorities for invoicing (if applies);
- transaction with tax relevance (if applies);
- intracommunity transaction;
- VAT quota deductible;
- date of accounting register and import SAD number for importations.

Consequently, the taxpayer should consider that the information currently registered in the accounting system will not normally be sufficient to comply with the requirements set by the SII, leading to significant changes to be necessarily implemented in order to cover all the information requested. This, in turn, should lead taxpayers to consider an in-depth review of the VAT treatment applied to the transactions carried out in their business activity, as well as the reporting process from a VAT perspective, in order to be in a safe position when reporting the transaction in real-time to the tax authorities.

III. Real-time Supply of Information

It is the real-time supply of information that is the most controversial change that the SII introduces for taxpayers, in view of the fact that taxpayers are obliged to supply the information related to issued invoices **within the following four days as from the issuing date**, while as regards received invoices, the information must be supplied **within the following four days as from the date of accounting register**. Through this change in the reporting deadline the tax authorities are passing the administrative burden to taxpayers, who, apart from being involved in the day-to-day difficulties and administrative burdens of the business, must comply with the VAT reporting obligations in real-time, which is almost impossible to undertake for small and medium-sized entities with a limited capacity to adapt their accounting system in terms of cost, time, human resources and technology. Besides, it should be noted that many companies affected by the SII are small and medium-sized exporters which are under the monthly VAT refund scheme with the purpose of optimizing recovery of the input VAT—since otherwise under the general regime they would need to wait until the end of the year to request the VAT refund—or nonresident companies without a

permanent establishment but with only a VAT number in place, who are not obliged to keep accounting records in Spain.

Basically, there are two ways for taxpayers to meet the real-time supply of information requirement: either with a technological development of their own accounting system which allows the registration of all data requested, together with a direct online communication with the tax authorities' website at the moment of issuing an invoice or registering a received invoice, or through a third party service provider which can use its own system to communicate the data on behalf of the taxpayer, which would be probably the approach to be followed by nonresident entities under the monthly VAT refund scheme. However, in the second case, the taxpayer in any event should pay attention to the four-day deadline, so perhaps would need to change the invoicing process in order

to meet this deadline by selecting only one day a month to issue all invoices and to register received invoices; which definitively is not an appropriate solution from a financial or cash flow point of view, even without considering those taxpayers that cannot follow this "issuing day" approach due to the limitations of their own business.

In any event, with its benefits and difficulties, the SII is already implemented in Spain, and the taxpayers involved are obliged to seek solutions in order to comply with the new requests for information before July 2017 since, as expected, the law provides for penalties in case of failure to comply with this system.

Javier Galván Falcón and Ignacio Sandino Egea are Partners with Diligens Tax Consulting, Spain.
They may be contacted at: j.galvan@diligens.es;
i.sandino@diligens.es