

Tax Alert Royal Decree Verifactu

CMS Albiñana & Suárez de Lezo

June 2024

Tax Alert Royal Decree Verifactu

On 6 December 2023, the Spanish Ministry of Finance published the approval of the Royal Decree 1007/2023, dated on 5 December establishing the Regulation that establishes the requirements to be adopted by the electronic systems that support the invoicing processes of entrepreneurs and professionals, and the standardization of invoicing record formats (the “**RD 1007/2023**”, or, the “**RD Verifactu**”) and the draft Order developing the technical and functional specification referred in RD Verifactu (the “**Draft Order**”).

Together, these two documents and the other annexes and criteria published by the Spanish Tax Authorities in its website constitute the so-called “**Verifactu Project**”.

1. Main features

Verifactu Project seeks to implement a new invoicing system that will provide the Tax Authorities with stronger elements on the veracity of taxpayers' invoices in order to prevent fraud.

This project aims to regulate the way in which the electronic billing systems must comply with the legal principles of integrity, preservation, accessibility, legibility, traceability and inalterability of billing records.

The main characteristics of Verifactu Project are summarized below.

i. Subjective scope

Verifactu Project concerns to two different players:

- a. Professionals and entrepreneurs which are taxpayers of the Spanish Corporate Income Tax, Spanish Personal Income Tax or Spanish Non-Resident Income Tax with a permanent establishment in Spain (it will not apply on the autonomous regions of the Basque Country and Navarra) who use an electronic billing system; and,
- b. Producers and distributors of electronic billing systems.

With regard to point (a) above, there are some exceptions to the application of Verifactu Project. For example, for professionals or entrepreneurs under the Direct Information System (“**SII**”) regime - which is mandatory for taxpayers with a turnover of more than 6,000,000 euros - or for those taxpayers who are not obliged to issue invoices (e.g., insurance companies).

ii. Objective scope

Verifactu Project affects to all the invoices issued by the abovementioned entrepreneurs and professionals.

In other words, the provisions detailed in RD Verifactu would affect to Business to Business - B2B - invoices, as well as to Business to Consumer - B2C - invoices, irrespective of their amount.

iii. Requirements of electronic billing system

The electronic billing system should meet certain requirements in order to produce all the effects required by the Verifactu Project. In short, the electronic billing system must:

- a. ensure the integrity, storage, accessibility, readability, traceability and inalterability of the invoicing records.
- b. allow the continuous, secure, correct, complete, consecutive, automatic, and electronic submission by electronic means of all the invoicing data to the tax administration.
- c. guarantee: (i) the integrity and inalterability of the billing records so that, once generated and registered, they cannot be altered without the computer system detecting and alerting them; (ii) the traceability of billing records, which must be linked in such a way that they can be traced from the first to the last in the sequence in which they were created; (iii) the preservation and accessibility of the information during the statute of limitation period; and (iv) the generation of a hash on to each invoicing record generated.

According to the information provided in RD Verifactu and in the Draft Order, there are three different invoicing records that the electronic billing system shall generate (at least):

- a. A record of events that automatically picks up, when they occur, certain interactions with the electronic billing system, operations carried out with it or events occurring during its use, etc. (not applicable in case of “**Verifactu scheme**” please see below);
- b. An invoicing record at the same time as or immediately prior to the issue of each invoice; and,
- c. A cancellation invoicing record when an invoice has been issued erroneously and it is therefore necessary to cancel its corresponding registration invoice record.

iv. Types of electronic business system

The RD Verifactu allows the taxpayer to use two different types of electronic business systems:

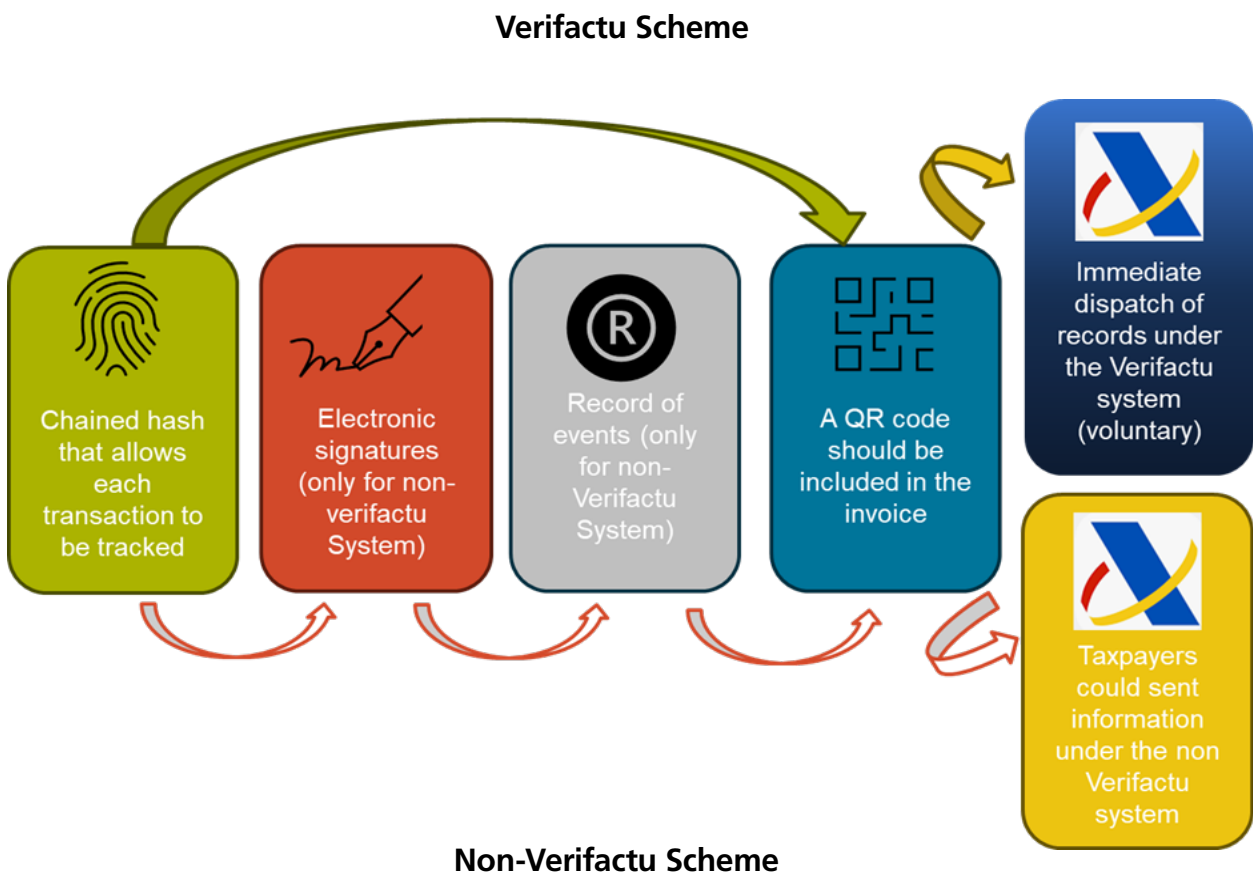
- a. Verifactu Scheme: implies the immediate transfer of the billing records to the Spanish Tax Authorities. Electronic billing systems under this scheme will not be required to: (i) electronically sign invoices (a hash will suffice); nor (ii) create a record of events.
- b. Non-Verifactu Scheme: these schemes must preserve the billing records in a way that guarantees their accuracy and integrity. Non-Verifactu schemes must allow the taxpayers to send their records to the Spanish Tax Authorities upon request in the same way as a Verifactu Scheme.

In both systems, the RD Verifactu requires that the invoices also contain a QR that allows taxpayers to send information to the Spanish Tax Authorities.

With said QR code the recipient of the invoice may voluntarily provide certain information on the invoice to the Spanish Tax Authorities by providing the data contained in the QR code, which can be done with a device capable of reading the code and transmitting and receiving data.

In the case of electronic billing system under the Verifactu scheme, the recipient will be able to verify that the invoice received has been sent to the Spanish Tax Authorities by the issuer of the invoice.

The following diagram shows the differences between both types of electronic business systems:



v. Responsible declaration

RD Verifactu establishes an obligation to the producers of electronic billing systems to provide the customers with a responsible declaration stating that the electronic billing system complies with the provisions of Verifactu Project.

Said declaration should be done in writing and visible in the electronic billing system in each of its versions, as well as for the customer and the trader when they acquire the product. It shall include all the data necessary for its correct identification.

This responsible declaration may be requested by the customer or by the Spanish Tax Authorities from the person or entity producing or trading the electronic billing system, which must keep and retain the responsible declarations for all versions of the electronic billing systems produced or marketed.

vi. Penalty Regime

Article 14 of the RD Verifactu establishes that the Spanish Tax Inspection may appear at the place where the electronic billing system is located or used and could request full and immediate access to the invoicing records, as well as download, copy or request, obtaining the necessary codes, passwords or security access.

In addition, the Spanish Tax Inspection could also request from the producers or distributors of the electronic business system the information necessary to verify the compliance with the requirements established by RD Verifactu.

The legality of this specific provision of RD Verifactu has been challenged before the Spanish Supreme Court, on the grounds that these rules should be established by an ordinary law and not by a Royal Decree.

Apart from the above, the Spanish General Tax Law establishes specific penalties for the failure to comply with the invoicing requirements established by RD Verifactu. In particular, the following penalties are applicable:

- Regarding producers or distributors of electronic billing systems: EUR 150,000 for each fiscal year and system. However, infringements related to the absence of a responsible declaration can be sanctioned with a fixed financial fine of EUR 1,000 for each system marketed in which the lack of the certificate occurs.
- Concerning taxpayers using electronic billing systems: EUR 50,000 for each fiscal year.

2. Next steps

The enforceability of Verifactu Project will take effect on the following dates:

- **Producers and distributors of electronic billing systems:** Within the 9 following months after the approbation of the Ministerial Order that develops the RD Verifactu (in any case before 1 July 2025).

- **Taxpayers with a turnover less of EUR 6M** (not included in the SII regime): 1 July 2025.

The Spanish Government shall apply the final Order that develops RD Verifactu and the Spanish Tax Authorities may: (i) create their own electronic business system that allows the taxpayer to comply with Verifactu Project; and (ii) create a web application where producers of electronic business systems can prove the correctness of their electronic business systems to comply with the requirements of Verifactu Project.

Contacts



Diego de Miguel

Partner | Tax

T +34 91 451 9281

E diego.demiguel@cms-asl.com



Ricardo Héctor

Partner | Tax

T +34 91 451 9301

E ricardo.hector@cms-asl.com



Marion Taylor

Associate | Tax

T +34 91 452 0008

E marion.taylor@cms-asl.com

This publication does not constitute legal advice by the authors. For further information, please contact:

cms-asl@cms-asl.com | [cms.law](https://www.cms.law)

CMS Law-Now™

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.

cms-lawnow.com

La información contenida en esta publicación es de carácter general y orientativo y no pretende constituir un asesoramiento jurídico o profesional. Ha sido elaborada en colaboración con abogados locales.

La AEIE CMS Legal Services (AEIE CMS) es una Agrupación Europea de Interés Económico que coordina una organización de despachos de abogados independientes. La AEIE CMS no presta servicios a los clientes. Dichos servicios son prestados exclusivamente por los despachos miembros de la AEIE CMS en sus respectivas jurisdicciones. La AEIE CMS y cada uno de sus despachos miembros son entidades separadas y legalmente distintas, y ninguna de ellas tiene autoridad para comprometer a ninguna otra. La AEIE CMS y cada una de las empresas miembro son responsables únicamente de sus propios actos u omisiones y no de los de la otra. La marca "CMS" y el término "despacho" se utilizan para referirse a algunos o a todos los despachos miembro o a sus oficinas; los detalles se pueden consultar en el apartado "información legal" del pie de página de cms.law.

Oficinas CMS:

Aberdeen, Abu Dhabi, Ámsterdam, Amberes, Argel, Barcelona, Belgrado, Bergen, Berlín, Bogotá, Bratislava, Bristol, Bruselas, Bucarest, Budapest, Casablanca, Ciudad de México, Colonia, Cúcuta, Dubai, Dusseldorf, Edimburgo, Estambul, Estrasburgo, Frankfurt, Funchal, Ginebra, Glasgow, Hamburgo, Hong Kong, Johannesburgo, Kiev, Leipzig, Lima, Lisboa, Liubliana, Liverpool, Londres, Luanda, Luxemburgo, Lyon, Madrid, Manchester, Mascate, Milán, Mombasa, Mónaco, Múnich, Nairobi, Oslo, París, Pekín, Podgorica, Poznan, Praga, Reading, Río de Janeiro, Roma, Santiago de Chile, Sarajevo, Shanghai, Sheffield, Singapur, Skopje, Sofía, Stavanger, Stuttgart, Tel Aviv, Tirana, Varsovia, Viena, Zagreb y Zúrich.

cms.law