

Spain's Tax Reporting Rule Targets Vacation Rental Intermediaries

IN SHORT

The Situation: Spain has introduced a new tax reporting obligation applicable to intermediaries in the renting of houses for tourism purposes, which mainly affects collaborative online platforms. Until now, the Spanish Revenue had tried (in some cases, unsuccessfully) to gather information through individual requests to these intermediaries based on general reporting obligations set out in Spanish tax laws.

The Result: As a tool against tax fraud, beginning January 1, 2018, persons who help arrange the renting of houses for tourism purposes must disclose certain information to the Spanish Revenue, which then can use this information to assess the property owner's taxable income arising from these transactions.

Looking Ahead: Using the 179 tax form (approval for which is pending), intermediaries must report these transactions on a regular basis. Failure to comply with this requirement would potentially trigger tax penalties. It remains to be seen how the market will evolve and owners will react to this new disclosure obligation.

Spanish Royal Decree 1070/2017, dated December 29, 2017, introduced as a tool against tax fraud a new reporting obligation enforceable beginning January 1, 2018, for persons and entities who help arrange the renting of houses situated in Spain for tourism purposes, with the aim of gathering tax information regarding the exploitation of Spanish properties.

According to this new piece of legislation, "renting of a property for touristic purposes" refers to the temporary assignment of use (either remunerated or for free) of all or part of a furnished and equipped home for immediate use irrespective of the channel through which it is commercialized or promoted.

Excluded Transactions

The following transactions are excluded from this concept of renting of a property for tourism purposes:

- Housing leases governed by Spanish Law 29/1994, dated November 24, 1994, on Urban Leases, including the partial housing sublease;
- Tourist accommodations governed by specific regulations; and
- Timesharing arrangements.

"Intermediaries" refers to any person or entity that renders (either for free or for consideration) an arrangement service between the assignee and assignor of the property. In particular, it includes collaborative platforms that help arrange these transactions when they are regarded as information society service providers (in accordance with Spanish laws implementing the Directive 2000/31/EC on electronic commerce), irrespective of whether they provide the underlying rental service or set particular conditions for the parties involved (such as price, insurance, term, or any other contractual condition).

Contents of the Reporting

Intermediaries must disclose to the Spanish Revenue the following information (subject to the details to be developed in the corresponding regulation):

- Identification of the owner of the property or of the holder of the corresponding right that permits the renting of the house for tourism purposes;
- Identification of the property, indicating its cadastral ID number;
- Identification of the persons or entities renting the property;
- Duration of the rental period; and
- Remuneration (if any) received by the person or entity renting the property.



Failure to comply with the new tax reporting obligation would allow the Spanish Revenue to impose penalties, which, depending on the volume of the data that has not been disclosed to the Spanish Revenue, may become significant.



According to the draft regulation—which, if enacted, will confirm the official tax form (Form 179) to be used for the persons and entities subject to the reporting obligation—this disclosure must be made on a quarterly basis.

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THREE KEY TAKEAWAYS

1. To prevent tax fraud, the Spanish Revenue has introduced a new reporting obligation that focuses on the rental of vacation properties in Spain.
2. The legislation applies to anyone that facilitates the rental of property for the purpose of tourism, even if that person or entity does not actually rent the property or set the price of the rental.
3. The Spanish Revenue has requested the relevant tax information for a number of years, and they have now focused on online platforms on the basis that, as agents operating between lessor and lessee in the real estate market, they may have access to the required information.

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