

E-invoicing regime

The Law no. 205/2017 introduced a general electronic invoicing obligation applicable from 1 January 2019 to all the supplies of goods and services carried out between subjects in Italy that are:

- resident;
- VAT established; or
- VAT registered.

The same law has provided for the early application of the e-invoicing obligation for certain categories of taxpayers as from July 1st, 2018. Specifically, these categories of taxpayers are those that carry out:

- supply of petrol or diesel to be used as motor fuel (postponed to September 1st, 2019 only for gas stations);
- services provided by sub-contractors in the framework of a work, service or supply contract signed with the public administration.

The obligation of electronic invoicing is aimed to spread the digital culture among the companies and to prevent the tax evasion and VAT fraud.

From January 1st, 2019, electronic invoices should be:

- converted into .XML format in accordance with technical specifications pursuant to Decree n. 55 dated April 3rd, 2013 (i.e. format currently used to send electronic invoices towards the public administration);
- signed with a qualified or digital signature: the SDI manages e-invoices even where the

qualified electronic signature is not affixed (although the qualified electronic signature still the most immediate way to ensure the authenticity and integrity of an e-invoice).

- sent to the counterpart through the SDI referred to in art. 1, paragraphs 211 and 212 of Law 244/2007.

For the transmission of electronic invoices, the taxpayers, upon agreements between the parties, can rely also on qualified intermediaries. However, the supplier will still be responsible for the issuance of the invoice in front of the Tax Authorities.

TAXPAYERS INVOLVED IN THE E-INVOICE

.XML electronic invoices must be submitted for all the supplies of goods or services rendered between taxable persons that are resident, established in Italy ("B2B" transactions). Electronic invoicing is mandatory also for "B2C" transactions in case the supplier has the obligation to issue an invoice.

In this case, electronic invoices issued to private consumers are expected to be made available to them by the Italian tax authorities electronic services. Furthermore, a copy of the electronic invoice or paper invoice should be made available directly by the supplier to the consumer. In this respect, the consumer can decide to waive its copy of the electronic or paper invoice.

The taxable persons who are exempt from electronic invoicing are included in the so-called "benefit scheme" (i.e. "regime di vantaggio") referred to in article 27, paragraphs 1 and 2, of the Law Decree n. 98 dated on July 6th, 2011, and in the so-called "flat-rate scheme" (i.e. "regime forfettario") referred to in Article 1, paragraphs 54 to 89 of Law n. 190 of 2014.

CONTENT, TRANSMISSION/RECEIPT AND RETENTION OF E-INVOICES

With reference to content, an e-invoice:

- must contain the mandatory information provided by article 21 of Italian Presidential Decree n. 633/1972;
- must also contain the other mandatory information indicated in the new technical specifications (e.g. SDI code and/or certified email address);
- may also contain additional data for administrative purposes (e.g. data relating to the purchase order or contract, etc.).

The supplier or the supplier's intermediary should transmit e-invoices to the SDI using one of the following methods:

1. a) certified e-mail (i.e. "PEC");
2. b) IT services provided by the tax authorities. In particular, the tax authorities will make available: an online procedure, an app for mobile devices and software to install on PCs;
3. c) an application cooperation system with «web service» or «FTP» data transmission. The use of "web service" or "FTP" data transmission is subject to a previous accreditation process to the SDI.

With respect to the receipt of the e-invoice, the SDI should deliver it to the recipient (or the recipient's intermediary) using one of the following methods:

1. a) certified e-mail;
2. b) application cooperation system with a "web service" or "FTP" data transmission, which imply an accreditation process to the SDI. Once the accreditation process is concluded,

the SDI associates to the taxpayer informatics system a 7-digit recipient code («SDI code»).

Considering the transmission methods described above and the fact that SDI acts between the issuer (supplier) and the recipient (customer), the date of issuance of the invoice might not coincide with the receipt date. Indeed, SDI processing times can vary from few minutes to five days when high volumes of e-invoices are sent at a given time.

In this respect, the Italian tax authorities Act clarified that:

- the tax point for the supplier is the date reported on the e-invoice pursuant to articles 21 or 21-bis of Italian Presidential Decree n. 633/1972;
- if the supplier has already registered an e-invoice that has been rejected by the SDI, to “neutralize” the VAT debt, it can carry out an accounting adjustment solely for internal purposes without transmission to the SDI;
- the date from which the right of VAT deduction arise for the customer is the date of invoice receipt issued by the SDI or, alternatively, the date when the e-invoice was viewed in the private section of the tax authorities’ website by the customer.

Finally, the Italian tax authorities Act confirmed the possibility for taxpayers to use the SDI, upon a service agreement with the tax authorities, for the electronic archiving of the e-invoices and credit notes that are transmitted and received.

With the Circular n. 13/E of July 2nd, 2018, the Italian tax authorities has provided further clarifications regarding mandatory electronic.

Circular n. 13/E specifies that, given the nature of the electronic invoice that must be unchangeable, the numbering of the invoice or any other integration of the same can be made by preparing a separate document to be attached to the purchase invoice.

Furthermore, it is specified that it is possible to store electronic invoices in a format other than .XML (for example, in “pdf”, “jpg” or “txt” format).

The Circular n. 13/E also reiterates that who issues/receives electronic invoices can keep them in Italy as well as abroad, in countries with which there is a legal instrument that regulates mutual assistance. Finally, it is highlighted that the storage service made available free of charge by the Italian tax authorities concerns both electronic invoices issued to private parties and those addressed to the public administration transited through SDI.

E-INVOICE TRANSMISSION METHODS

To facilitate the delivery of e-invoices, the tax authorities will provide a registration service whereby invoice recipients may indicate how they prefer to receive the files (i.e. by certified email or recipient code). In this case, the e-invoices will always be delivered to the registered email address regardless of what the supplier indicates in the .XML invoice.

Moreover, the tax authorities Act provides instructions on how to fill in the .XML field “SDI Code” that will be relevant when the customer is not registered on the SdI. In particular, the .XML field “SDI Code” can be filled in by entering the SDI code of the customer or its intermediary or by entering a blank code “0000000” where the e-invoice is transmitted to the certified email address of the customer or, for example, in case the e-invoice is addressed to private consumers.

Finally, the tax authorities Act provides for some cases (for example, in the event of technical transmission problems as the certified email account’s inbox is full) in which the SDI provides the customer with the e-invoice in a private section of the tax authorities’ website. In these cases, the supplier is required to immediately inform the customer that the original e-invoice

is available in its private section of the tax authorities' website (it can also deliver an electronic or hard copy of the e-invoice to the customer in this respect).

The Circular n. 13/E confirmed that the terms of issuance of electronic invoices must comply with the time of supply (within 24:00 of the same day). However, the Circular clarifies that the invoice file, during the first application of the new provisions, sent with a slight delay that does not prejudice the correct VAT settlement, constitutes an infringement that is not punishable, as does not cause detriment to the exercise control actions and does not affect the determination of the taxable base, the determination of VAT and the VAT payment. Furthermore, in the event that the invoice is rejected by the SDI, it must be issued again within 5 days from the notification with the same date and number of the original document.

However, where the issuance of the document with the same number and date is not possible, provided the VAT settlement is not affected, it will be possible to proceed alternatively by issuing an invoice with:

- a new number and a new date, showing a link to the previously rejected invoice; or
- a new number and a new date but adopting a specific numbering, possibly through the use of a special sectional register.

Moreover, following the latest updates have intervened on the subject of electronic invoicing the Decree of reference reads as follows:

- for the first half of the year 2019 the penalties for failure to invoicing (i.e. penalties ranging between 90% to 180% of the VAT not correctly documented) are not applied on the condition that the invoice is issued (i.e. transmitted to SDI) within the deadline for the settlement of the tax for the period in which the transaction was carried out. Moreover, an 80% reduction of the aforementioned penalty is established on condition that the

electronic invoice is issued within the period of the subsequent periodic liquidation;

- from July 1st, 2019 is expected that an invoice is issued promptly (transmitted to SDI for the electronic invoice) within 10 days of the transaction. In this case, it is mandatory to indicate in the invoice the date of the transaction (different respect the date of original issued).

For example, the invoice of an operation made on July 31st, 2019 may be issued (transmitted to the SDI) no later than August 10th 2019, highlighting in the document (Xml file) that the operation was carried out on July 31st 2019 (no indication must be respected where invoice is issued on the same day of the transaction).

CROSS-BORDER COMMUNICATION

Always starting from January 1st, 2019, subject resident or established in the territory of the State will be required to submit to the Italian tax authorities the data related to the supply of goods and services provided/received to/from parties not VAT established or VAT registered in Italy.

The tax authorities Act specified that, for output invoices only, the cross-border communication can be avoided where the taxpayer transmit to the SDI the entire .XML invoice issued, entering a specific code in the "SDI code" field.

The electronic submission to Italian tax authorities will be due through a specific communication to be sent within the last day of the month subsequent to the date of issuance or to date of receipt of the invoice.

PENALTY REGIME

In case of issuance of the invoice, between Italian VAT resident or VAT established subjects, in a different way in respect to the above-mentioned specifications, the invoice is considered as omitted and penalties according to article 6 of the Legislative Decree n. 471/97 will be applicable (i.e. penalties ranging between 90% to 180% of the VAT not correctly documented).

In addition, the client that will not receive the purchase invoice according to the requirements mentioned above, in order to avoid the penalties provided for by article 6 of the Legislative Decree n. 471/97 (i.e. equal to 100% of the VAT not documented) should comply with the documental obligations provided by that law (so-called "*autofattura denuncia*") through the use of SDI.

With reference to the new "cross-border communication" in case it will be omitted or submitted with erroneous or incomplete data, the new penalty provided for by article 11, paragraph 2quater of the Legislative Decree 471/97 will be applicable (i.e. € 2 for each invoice, considering an upper limit of € 1.000 for each quarter, even if the obligation is on a monthly basis). It is envisaged the possibility to reduce to half the penalty in case the communication will be correctly submitted within 15 days from the ordinary deadline.

SIMPLIFICATIONS AND TAX BENEFITS

As already foreseen by the previous version of the Legislative Decree n. 127/2015, it is provided the reduction of two years of the tax assessment period (both for VAT and other taxes purpose) for the taxpayer resident, established and registered in Italy for VAT purposes.

In this respect, to benefit of such a reduction, the taxpayer must guarantee the traceability of all the payments for an amount higher than € 500 received and carried out from/to its counterparts (the procedures will be defined by a subsequent Ministry of Finance's Decree).

In addition, the law clarifies that the reduction of tax assessment period will not be applicable for the taxpayers that are carrying out transactions falling under article 22 of the Presidential Decree n. 633/72, except for those taxpayers that have exercised the option according to the article 2 of the Legislative Decree n. 127/2015 (i.e. option to e-submit the daily amount of considerations).

On the other hand, the Budget Law repealed the provision for which a taxpayer was granted to access in a priority way the refund of VAT credit, without satisfying the requirements provided for by article 30, of the Presidential Decree n. 633/72.

Finally, the 2018 Budget Law foresees some simplification measures for the taxpayers, in particular:

- the e-archiving obligation for tax purposes will be automatically satisfied for all the e-invoices, as well as for the other e-documents submitted through the interchange;
- article 21 of the Decree Law n. 78/2010, which oblige taxpayers to submit the "*Spesometro*" is abolished;
- Italian tax authorities, once acquired those tax data, will aid the taxpayers carrying out arts, professional activity or business activity adopting "simplify accounting" for the calculation of their taxes and for the draft of the tax return. For those subjects, VAT ledgers kept pursuant article 23 and 25, Presidential Decree no. 633/72, are no longer required;
- the introduction of the mandatory tax-free shopping e-invoicing regime, related to the supply of goods to private customers resident outside European Union (reference is made

to article 38-quarter, Presidential Decree no. 633/72) has been applied to September 1, 2018.