

The italian e-invoicing journey: which destination?

From far 2014 to today: the Italian electronic invoice journey has begun so long. This obligation was originally limited to specific VAT transactions (i.e. supplies to Public Body – “B2G”). This mandatory invoicing procedure has been gradually extended until to get to the 2018 Italian Budget Law, that provided for mandatory E-invoicing procedure with respect to all business to business (B2B) and business to consumer (B2C) transaction, from 1 January 2019. Where (and how) will end this journey?

Legislative Decree no. 127 dated 5 August 2015 introduced the obligation to issue invoices in an electronic format (**e-invoice**). This obligation, however, was originally limited to specific VAT transactions (i.e. supplies to Public Body – “B2G”). This mandatory invoicing procedure has been gradually extended and 2018 Italian Budget Law (Law no. 205 dated 27 December 2017) provides for mandatory E-invoicing procedure with respect to **all business to business** (B2B) and **business to consumer** (B2C) transactions, performed between taxable persons resident for tax purposes in Italy or by foreign taxable persons established in Italy (i.e. Italian fixed establishment).

This new system is applicable from 1 January 2019.

Introduction of mandatory E-invoicing procedure

Starting date	Transactions involved
6 June 2014	Certain B2G transactions (Ministry, Fiscal Agencies and Social Security Institutions)
31 March 2015	All B2G transactions
1 July 2018	Supply of petrol or diesel intended for use as motor fuel and public subcontract sector transactions
1 September 2018	Supply of goods to clients that are foreign extra-EU residents

<p>1January2019</p>	<p>All B2B and B2C transactions between tax residents in Italy of PE of foreign</p>
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The Italian E-invoicing exchange process

VAT taxable persons shall issue the e-invoice in a particular format (**XML Format**) and transmit such invoice to the ‘Sistema di Interscambio’(‘SDI’), an Interexchange System managed by the Italian Tax Authorities, using a communication channel among those provided by the law. The communication channel permitted are: **Certified Electronic Mail** – CEM, Italian Tax Authorities instruments (web, app, PC software), **webservice** (SdICOOP) or **FTP**. Please note that some of those communication channels require a previous validation by SDI.

Through the SDI, the Italian Tax Authorities will perform a check and **automatically collect details** of e-invoices, before transmitting it to the recipient through the channel of communication chosen by the latter (only CEM, webservice and FTP are allowed). If the recipients fail to elect for a specific communication channel, the received e-invoices will be available in a reserved area of the Italian Tax Authorities portal (“fatture e corrispettivi”). Please note that, in case an e-invoice is issued in a format other than those accepted (e.g. **paper** or file different from “XML”) or it is not transmitted through the SDI, Italian Tax Authority will disregard such invoice and it will be considered **omitted**, with the application of relevant VAT penalties.

Italian Tax Authorities clarified that the e-invoicing procedure did not repeal registration and retention of such invoices, while communication of invoice data (Spesometro) will no longer be due for e-invoiced transactions. Nevertheless, a communication of invoice data (so called Esterometro) will still be required with respect to transactions performed towards **foreign persons not established** in Italy, save for transactions for which an e-invoice or a custom bill have been issued.

Moreover, the ordinary statute of limitations for VAT purposes is reduced by two years,

provided that payments over a certain threshold (Euro 500) are tracked and B2C sales receipts (if any) are electronically transmitted to the tax authorities.

VAT deductibility and interplay with e-invoicing system

In **B2B transactions**, VAT taxable persons are allowed to deduct VAT from the amount of VAT he is liable to pay given that:

- (i) VAT is due (substantial requirement);
- (ii) the taxable person has received the invoice (formal requirement); and
- (iii) the right to deduct VAT is exercised within a certain time limit.

As the e-invoicing procedure has been implemented, timing requirement for the deduction of VAT will be adapted to the new procedure. More in details, the **substantial requirement** will be satisfied (i) from the date of receipt as attested by the electronic instrument of transmission (i.e. receipt message of CEM or SDI notification) or (ii) from the date of view in the dedicated area of the Italian Revenue Agency.

With respect to **timeframe for deduction**, Decree Law no. 119/2018 extended the right to deduct until to the 15th days of the month following the one in which the transaction has been performed (see below) to the extent that within such deadline the invoice has been received and the relevant transaction is not performed in another fiscal year.

The table below illustrates the timing effect of the different receipt sent by the SDI.

SDI Receipt to e-invoice issuer	Description	Effects on the issuer	Effects on the recipient
Delivered	Checks performed through the SDI resulted in a positive feedback. Notification of regular delivery to the recipient through the communication channel elected.	VAT is due from the date of the e-invoice	Recipient is allowed to deduct VAT from the date of delivery attested in the receipt, without prejudice to the liquidation procedures timing

<p>Rejected</p>	<p>Checks performed through the SDI resulted in a negative feedback. The invoice is considered as never issued.</p>	<p>Issuer shall transmit a new e-invoice within 5 days from the rejection receipt. If it fails to do so, penalties for omitted invoicing will apply.</p>	<p>The recipient is not allowed to deduct VAT. If the seller/provider fails to issue a valid e-invoice, the recipient shall mandatorily restore compliance with the VAT law (or penalties apply).</p>
<p>Delivery failure</p>	<p>SDI fails to transmit the e-invoice to the recipient due to a failure of the recipients' communication channels (e.g. CEM mailbox full).</p>	<p>VAT is due from the date of the e-invoice</p>	<p>The recipient is allowed to deduct VAT from the date of the opening /download from the reserved area of the Italian Tax Authorities portal ("Fatture e Corrispettivi").</p>

The amendment to the e-invoicing procedure by 2019 Budget Law and Law Decree no. 119/2018

As mentioned, recently the e-invoicing procedure has been amended by Law Decree no. 119 dated 23 October 2018 and by 2019 Budget Law (Law no. 145 dated 30 December 2018).

More in details, Law Decree no. 119/2018 clarified some relevant aspects concerning:

(i) Persons subject to mandatory e-invoicing: art. 15 excluded the mandatory adoption of e-invoicing procedure for transactions involving **foreign entities** identified in Italy for VAT purposes. Such amendment appears to be consistent with the clarifications rendered by the in the Circular Letter no. 13/E dated 2 July 2018, by which the Tax Authorities stated that the mere VAT identification in Italy shall not imply the mandatory adoption of e-invoicing procedure for transactions carried out in Italy. Clearly, this does not apply in case the foreign entity is identified and has a permanent establishment for VAT purposes in Italy;

(ii) Timing of **issuance** and **recording** of e-invoices: in the original provision, that will be applicable up to 30 June 2019, e-invoice should have been issued within midnight of the day

in which the transaction is considered to be carried out for VAT purposes. Starting from 1 July 2019, the VAT taxable person can issue the e-invoice and transmit it to the SDI within 10 days from the date in which the transaction is considered to be carried out for VAT purposes. Timing for recording has been extended as well: e-invoices can be recorded in the relevant VAT register within 15th of the month following the date in which the transaction is considered to be carried out.

(iii) **Right to deduct VAT:** the right to deduct VAT can be exercised within the 15th days of the month following the one in which the transaction has been performed (save for transactions performed in a previous fiscal year).

(iv) **Penalties** relief for the first semester of 2019: art. 10 provided a relief from penalties in case the e-invoice is issued within the deadline for VAT periodical liquidation. Moreover, a reduction of 80% of penalties is set forth in case of issuing of the e-invoice within the deadline for the following VAT periodical liquidation. This relief from penalties applies until 30 September 2019 for VAT taxable persons that liquidate VAT monthly. Please note that the Italian Tax Authorities clarified that said relief does not cover the **violation for omitted payment**. Thus if the late issuing of the e-invoice resulted in a lower amount of VAT periodical liquidation, penalties for omitted payment will **apply in full**.

2019 Budget Law introduced further modification to the e-invoice procedure.

Firstly, 2019 Budget Law repealed the regime introduced by Law Decree no. 119/2018 for sponsorship and advertising agreements entered into by certain amateur sport entities.

Further, it provided that entities required to send data to the **Health Card System** (HCS) – for the elaboration of the pre-filled income tax return – cannot issue e-invoices for invoices whose data are to be sent to the HCS. In fact, tax data transmitted to the HCS can only be used by public administrations for the application of the tax and customs provisions.

The Italian Tax Authorities issued further clarifications in case of a **transaction with a foreign resident** that is e-invoiced through the SDI (i.e. issued in a XML format and using

“XXXXXXX” as recipient code) and analogically sent to the recipient. In this cases, even if in theory no obligation to issue e-invoice is applicable (being the recipient a foreign established VAT entity) the original document to be subject to the e-storing procedure is the e-invoice delivered to the SDI (**not the paper one**).

(IPSOA Wolters Kluwer 4th February 2019)