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The electronic invoice

The electronic invoice

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I. Editorial

Dear readers,

This e-book aims to take stock of a new regulation, which affects significantly the Italian VAT entities' administrative processes . As a consequence they have to reconsider the flows of the active and passive invoice cycles .

Starting from 1st January 2019 the new regulation makes compulsory the use of e-invoices (some taxpayers will be subjected to it in advance, starting from 1st July 2018) in every transaction between entities with an Italian VAT number. Indeed, the new regulation has the goal to fight the VAT tax evasion, which, according to European statistics, affects especially Italy. Following governmental estimations, compulsory e-invoicing should allow, once fully implemented, slightly above € 2bn tax savings, due to the greater VAT amount drawn by the Government and to the positive impacts on the direct taxation too.



Stefan Brandes

It is hoped that the introduction comes along with the repeal of some provisions, which forced in recent years the taxpayers to go beyond the call of duty to comply correctly with the pressing VAT novelties: for example the use of the so-called "internal" reverse charge or the introduction of the split payment.

Each VAT taxpayer has to ensure that the invoices are issued in the allowed electronic format and that they are delivered to the invoices' handling system ("Sistema di Interscambio") arranged by Italian fiscal authorities. This is the only way to both ensure the validity of the issuance of the document for the supplier and the right to the deduction of the VAT for the client .

The tax authorities are making an effort (not without delays) to try to provide to Italian taxpayers all the tools in order to issue, send and receive electronic invoices, but it is worth mentioning what some experts are repeating in these months during conferences and seminars on this new regulation, namely that it is unlikely that software and tools arranged by Italian fiscal authorities alone will be sufficient to meet the administrative needs of companies and of small entrepreneurs.

On the contrary, it will be essential for those entities to be accredited by the fiscal authorities through their own software-houses or to exploit the accreditation channels arranged by the software-houses in order to be authorized to issue and to receive electronic documents. This will grant the compliance with tax obligations in terms of correct and timely issuance of documents, without congesting the flow of sales invoices and at the same time allowing to exploit the benefits that the standardization of the documents will generate on the purchase side, especially with reference to the booking of the documents received.

Thus we suggest companies to turn to their software providers in time, in order to identify together the ideal solution to fulfill this important new regulation, trying to make an opportunity out of it.

A warm greeting,



Stefan Brandes
Managing Partner, Italia



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II. Electronic invoice

By Pamela Ciarcia, Francesco Bocci e Camilla Valoti



1. The electronic invoice: tips

The Italian Budget Law (Law no. 205 of 27 December 2017) provided for a compulsory issuing of an electronic invoicing for resident VAT tax payers, established and identified in Italy, from 1st January 2019.

This obligation applies in advance, starting from the 1st July 2018 to the supply of petrol and diesel fuels as motor fuels and to services rendered by subcontractors in the framework of a public tender.

The obligation of electronic invoicing involves the issuance, submission and storage of the VAT document. This invoicing system has existed in Italy since 2013, when the obligation to submit electronic invoices to Public Administrations was introduced.

The development of electronic invoicing

The use of electronic invoices between private residents has been introduced in 2017 as option and the latest Italian Budget Law (Law no. 205 of 27 December 2017) has then provided for the obligation to all parties subject to VAT, with the exception of some "minimum" subjects (like young entrepreneurs and redundancy workers and flat-rate tax regimes).

Non-resident, non-established and unidentified parties

Mandatory electronic invoicing concerns the supply of goods and services rendered among parties that are residents, established or identified in Italy. The supplies and services provided to or received from parties that are non-resident, non-established or unidentified in Italy do not need to be certified by electronic invoice. These transactions, so-called "cross-border", if not already documented by customs or electronic invoice, have to be communicated to the Revenue Agency¹ with a specific electronic communication similar to the current communication of all the data of purchase and sale invoices (the so-called "*Spesometro*").

¹ Hereinafter RA o Agency.

B2C invoicing

The obligation of electronic invoicing also applies to invoices issued towards consumers (B2C, if the customer requests an invoice to prove the transaction). The Budget Law provides that the invoices will be available to consumers both through the electronic services of the Revenue Agency (in electronic format) or directly by the issuer (in paper or digital format), unless the purchaser decides to waive one of the two types.

The three stages of issuing electronic invoices

The obligation of electronic invoicing between private residents must follow the standards defined by the Revenue Agency and will include simple steps:

- › Creation of the invoice (with a file in XML format);
- › Submission and receipt of the invoice through an Interchange system (so called Sdl) - a "virtual place" made available by the Revenue Agency for the reception, sorting and storage of all electronic invoices;
- › Digital storage of the invoice.

Credit and debit notes

Not only invoices, but also all the credit and debit notes will have to be issued through electronic systems.

Omitted invoicing

If the issuer of the invoice does not comply with the format requirements (XML) and submission via Sdl, penalties will be applied for the omitted invoicing.

The Provision of 30th April 2018

On 30th April 2018 the Director of the Revenue Agency issued a Provision (no. 89757) establishing the procedures for issuing, submitting and storing electronic invoices.

Generation of e-invoices

Electronic invoices may be generated using tools made available free of charge by the Agency (a program to be installed on the computer, a web procedure, an app and a QR code) or using software available on the market.

Submission of invoices

The submission can be done via PEC certified email, using the Agency's web procedures and/or the app or, with prior accreditation to the Sdl, through a cooperation application system on the Internet (SdlCoop) or a data transmission system between remote terminals (SdlFtp).

Receipt of invoices

Regarding the receipt of invoices, economic operators can choose between receiving them via PEC certified email or through the SdI Coop and SdIFtp systems, but in the last two cases a cooperation with software providers is necessary to acquire the original invoice in XML format and translate it into a file that is both readable and usable.

Storage of invoices

The Agency offers a free service for storing invoices in XML format, subject to acceptance of a service agreement available in each user's reserved area on the Agency's website.

Obligations from 1 July 2018

Mandatory electronic invoicing will apply starting from 1st July 2018 to the supplies of petrol and diesel fuels for motor vehicles and to the services rendered by subcontractors of public tender.

Traceability of fuel purchases

Together with the introduction of mandatory electronic invoicing for the sale of petrol and diesel fuels, starting from 1st July 2018, for VAT deductibility and cost deductibility purposes, fuel purchases will have to be made using traceable payment methods identified by the Provision no. 73203/2018 (including credit cards, debit cards, prepaid cards, bank and postal cheques, etc.).



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2. The electronic invoice

The electronic invoice is a digital document introduced with the 2008 Budget Law, with the aim of creating an adequate regulatory and technological framework for electronically managing the invoicing and tax control system. This document is submitted by the sender in digital format and stored in the same format by the recipient. Like with the traditional document, there is a supplier (of a good or service) that issues the document and the recipient of the good or service (buyer) that receives the submitted document.

From a content point of view, electronic invoices do not differ from traditional invoices. In fact, the electronic invoice contains the information required by art. 21 of Italian Presidential Decree no. 633/72 (main VAT law) or, in case of a simplified invoices, those defined by art. 21-bis of the same decree. In any case, the electronic invoice file allows users to add to the mandatory information other useful data for the management of account receivables and account payables section. From a formal point of view, an electronic invoice has the same legal value of a paper invoice.

The format in which electronic invoices must be issued, submitted, filed and stored is a digital format called XML (eXtensible Markup Language), which is a computer language that makes possible to define and control the meaning of the elements contained in the document, thus verifying the information for the purposes of the controls required by law. In addition, electronic invoices in XML format must be structured in such a way as to guarantee the non-modifiability of the acts, facts and data represented therein.



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3. Electronic invoice to the Public Administration

Electronic invoicing to the Public Administrations (then to Ministries, Agencies, Bodies and also all other public administrations) is mandatory since few years ago.

Electronic invoicing towards the PA involves:

- › The supplier or its intermediary.
- › The Interchange system (Sdl).
- › The Public Administration receiving the invoice.

The administrations subject to mandatory electronic invoicing must communicate a unique identifying code of six fields consisting of letters and numbers to their suppliers. The code is named "office code" for electronic invoicing. The code must be shown on the electronic invoice together with the VAT number, the address, the date of the document and all other data relevant for tax purposes. After being completed electronically, the document must be digitally signed by the issuer, to guarantee the integrity of the information contained in the invoice and the authenticity of the issuer. The signed e-invoice will transit through the Interchange system (Sdl), which by law is the mandatory crossing point for all electronic invoices. The system has to be considered as an intersection between the actors involved in electronic invoicing and has the task of verifying that the format of the document is correct and that the data entered are complete.

Once the checks have been carried out, using the unique code, the system sends the invoice to the intended Public Administration.

Moreover, by using a digital signature and by tracking the flow of invoices, electronic invoicing guarantees the authenticity of the origin and the integrity of the content.

The Interchange system (Sdl) in relations with the PA

In order to comply with the obligation of electronic invoicing, the Interchange system (Sdl) has been set up by the Revenue Agency.

The functions of the Sdl are:

- › To receive invoices in the form of files having the characteristics of the "*FatturaPA*" ("PAInvoice") in XML format, the only form accepted by law.
- › To verify the content of all the e-invoices received.

- › To forward the invoices received (in XML format) to public entities, the intended recipients of the invoices.



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4. Evolution of electronic invoice

Budget Law 2018 introduced various provisions concerning value added tax, and one of the main actions concerns the introduction of the general obligation of electronic invoicing starting from 1st January 2019.

With the new changes, the electronic invoice will become a mandatory tool also for transactions between "private" parties (B2B or B2C) for the sale of goods and services rendered between subjects that are residents, established or identified in Italy.

The option of electronic invoicing between private parties was introduced since 1st January 2017, a possibility that seems to have already been implemented by about 50,000 subjects.



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5. Electronic invoicing: what changes and when

The reason is that the submission of all invoices via the Interchange system and the use of a structured XML format allows Tax Authorities to have all the data of transactions relevant for VAT purposes available in real time.

For the moment there is no plan to eliminate the quarterly reporting of periodic VAT settlements pursuant to article 21-bis of Italian Decree Law no. 78/2010.

The progressive introduction of mandatory electronic invoicing will initially involve, as of 1st July 2018, taxpayers involved in the commercial fuel supply chain and in the public procurement chain.

From 1st September 2018, on the other hand, electronic invoicing will be implemented for transactions concluded under tax free shopping pursuant to article 38-quater of Italian Presidential Decree 633/1972.

Mandatory electronic invoicing also applies to invoices issued towards consumers (B2C), but in the following manner: at the time of purchase, the supplier will issue an electronic invoice and at the same time he will make available a copy of the invoice to the consumer in traditional or digital format. It is specified that the consumer can choose to waive the digital or paper copy of the document.

The electronic invoice issued by the supplier will be made available to the consumer in his / her personal area of the Revenue Agency website.



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6. Credit notes and self-billing invoices

Starting from 1st January 2019 VAT variation notes will also be required to pass through the RA Interchange system (Sdl). In particular, the technical rules for electronic invoicing (which will be detailed in the following paragraph "10. Requirements for issuance, submission and storage") will also apply to the so-called credit notes. However, as specified in the Provision of the Director of the RA on 30th April 2018, the Sdl does not handle requests for changes sent by the customer or client to the seller or service provider, so no variation notes will be allowed (so-called "debit notes") from these parties.²

As for self-billing invoices, the provision of the Agency refers only to so-called "self-invoice-report", i.e. to the case where the taxable party does not receive the invoice within four months from the date of execution of the transaction and he is then obliged to issue a self-invoice to settle the transaction in place of the seller/service provider.³ In this case, the taxable party must submit the self-invoice to the Sdl, in the electronic invoice field "DocumentType" entering a conventional code and the information of the seller or service provider with its own data and those of the customer with the data of the supplier.

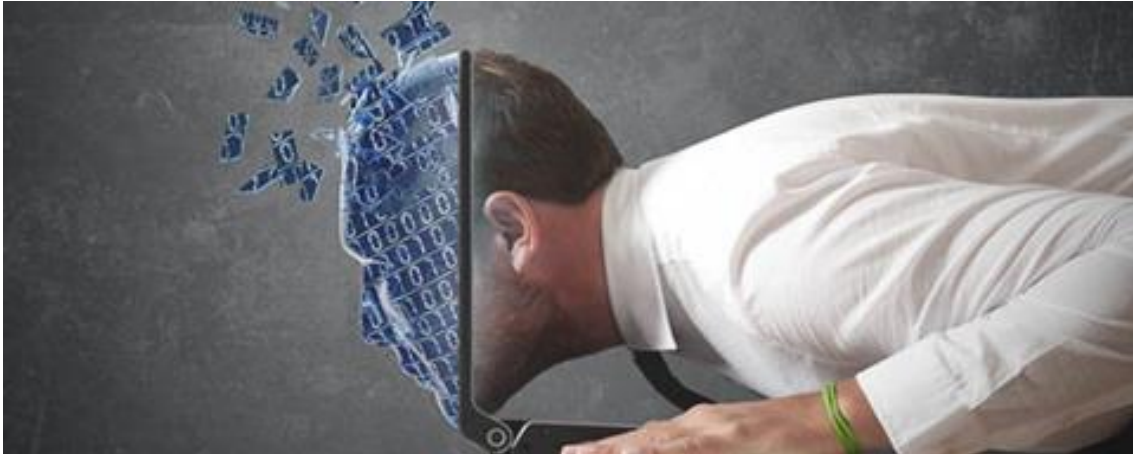
Other self-invoices, for example the purchase of services from non-EU suppliers, were not regulated by the Provision of 30th April 2018. For these cases operational instructions are still pending.



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² Pursuant to art. 26 of Italian Presidential Decree 633/72, the seller or service provider has the right to reduce the VAT of a transaction (by issuing a credit note) and the obligation to increase it (by issuing a debit note) if one or more elements of the original transaction are changed. It is common practice, especially in some commercial sectors, for the customer or client to issue a debit note in place of the supplier. This will no longer be possible since the variation note must be issued by the seller or service provider since the Sdl is able to manage only variation notes issued by these parties.

³ It is called a "self-invoice-report" because the fact must be reported to the RA, to which the corresponding VAT must be paid and the defaulting seller reported.



7. Subjective exclusions from the obligation and other consequences of electronic invoicing

The new provisions on electronic invoicing do not apply to those tax payers who apply the so-called "regime di vantaggio" (tax relief regime) referred to in article 27, paragraphs 1 and 2 of Italian Decree Law no. 98 of 6 July 2011 and the flat-tax regime referred to in article 1, paragraphs 54 to 89 of Italian Law 190 of 23 December 2014.

The issuance of electronic invoices through the Interchange system (SdI) is not the only new development. As a corollary of the aforementioned obligation, the following measures are envisaged:

- A two-year reduction in the terms of assessment for parties that guarantee - in a manner to be established by a ministerial decree - the traceability of payments received and carried out relating to transactions exceeding € 500.
- It is envisaged that the RA will make available some online assistance services to taxpayers with simplified accounting, based on the data acquired through:
 - > Electronic invoices;
 - > Disclosures of cross-border transactions;
 - > Data regarding payments.
- These services will guarantee taxpayers the availability of information from the RA for the preparation of the periodic VAT settlement, the annual VAT form and income tax returns complete with the corresponding summaries of the calculations made, as well as drafts of F24 forms with the amounts of taxes to be paid.



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8. Cross border transactions

As a corollary of the obligation to issue invoices electronically through the Interchange system, the electronic submission of data to the RA relating to the supply of goods and services provided to and received from parties not established in Italy is also compulsory.

The taxable parties residing or established or identified in Italy shall electronically submit to the Revenue Agency the data relating to transactions (not subject to customs procedures) made with non-resident, non-established and unidentified counterparts in the country (a sort of "cross-border *Spesometro*"), unless electronic invoices have been issued or received for such transactions through the Interchange system.

In this way the RA can acquire all the information related to VAT transactions that have not already been intercepted by Customs or by the SdI.

Electronic communication of cross-border transactions must be sent within the last day of the month subsequent to the date of issuance of the document or the date of receipt of the invoice. Essentially, it seems that as far as intra-Community trade is concerned, the information already sent with the Intrastat forms will be duplicated.

The Revenue Agency (Provision no. 89757/2018) specifies that "date of receipt" means the date of registration of the transaction for VAT settlement purposes.

The data to be submitted will be the following:

- › Identification details of the seller/service provider;
- › Identification details of the customer/client;
- › Date of the document proving the transaction;
- › Registration date (only for the documents received and the corresponding variation notes);
- › Document number;
- › Taxable amount;
- › VAT rate, or, if the transaction is out of VAT scope, the type of transaction.

It will also be possible to submit electronic invoices to the SdI for all the transactions concluded with parties not residing in the country by entering "XXXXXXX" in the "RecipientCode" field of the electronic invoice. In this way the SdI will be able to automatically understand that the invoice is issued towards a foreign subject. However, concurrent with the submission of the electronic invoice to the SdI, the Italian supplier has to send an analogue or digital copy of the invoice to the foreign customer.

Failure to disclose cross-border transactions

Paragraph 915 of art. 1 of Budget Law 2018 provides for a specific administrative penalty in case of omitted or incorrect submission of the communication of cross-border transactions: 2 euros for each invoice with a maximum limit of 1,000 euros for each quarter; the penalty is reduced to half (with a maximum limit of 500 euros) if the submission is made within 15 days after the deadline or if the correct data are submitted within the same term.

The application of so-called cumulative judgement is excluded (art. 12 of Italian Legislative Decree no. 472/1997).



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9. Penalties

From 1st January 2019 - and earlier from 1st July 2018 for the supply of motor fuel and for transactions regarding public subcontracts - invoices will be considered as not having been issued if they are not prepared in XML format and submitted to the Interchange system (SdI).

The issuer of the invoices will be subject to the penalties referred to in Italian Legislative Decree 471/1997 for violations related to documentation, registration and identification of transactions subject to VAT, with a fine ranging from 90% to 180% of the tax related to the taxable income that was not properly documented or registered.

In order to be able to deduct input VAT without having received an electronic invoice from their suppliers, the tax payers customer will be obliged to comply through SdI with the related fulfilment as per article 6, paragraph 8 of Italian Legislative Decree 471/1997.⁴ They will therefore have to provide for the settlement of the invoice, under penalty of the application of an administrative penalty equal to 100% of the tax, with a minimum of € 250.



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⁴ The aforementioned "self-invoice-report".



10. Requirements for issuance, submission and storage

With Provision no. 89757 of 30th April 2018, the Agency issued the technical rules for the proper issuance, submission and receipt of electronic invoices for transactions between parties that are resident, established or identified in Italy through the SdI.

The justification of the Provision specifies that for electronic invoices to be sent to the Public Administration the current technical rules provided for by Italian Ministerial Decree no. 53 of 2013 apply.

Issuance of the invoice

For the creation of the e-invoice file, the Agency makes available a web procedure,⁵ an application that can be used by a mobile device (app) and a program that can be installed on a computer.

The online services made available by the Revenue Agency allow the creation of the document in three ways:

- › Entering all the data into an empty form;
- › Opening the last invoice generated and changing it;
- › Importing an XML file that was previously generated.

It should be noted that those who want to test a simple simulation of the procedure for issuing an electronic invoice can do so by entering their access credentials in the online services of the Agency or a PEC certified email address at the following link:

<http://www.fatturapa.gov.it/export/fatturazione/it/sperimentazione.htm>

Note! - Subjects who already have an accredited connection (web service or FTP) to the SdI can test the process by sending an experimentation request and following the instructions contained in the "Request for Experimentation" form.

⁵ Instructions available at the following link:
https://assistenza.agenziaentrate.gov.it/Servizilva/KanaFattElettr.asp?new,Kb=FattElettr,retur=1,t=homeSezione.tem,VARSET_FolderSezione=277,ts=Fatturazione,Company={6C688E8E-C5B4-4C73-88B0-D2024CFF8AC3}

Submitting and receiving invoices via Sdl (Interchange system)

The electronic invoice is submitted by the party required to issue it or, on its behalf, by an intermediary⁶ to the Sdl in the following ways:

- a) Certified email (PEC): the electronic invoice file is attached to an email that cannot exceed the size of 30 megabytes;
- b) IT services made available by the Revenue Agency, including the web procedure and the app;
- c) Application cooperation system on the Internet (SdlCoop);
- d) Data transmission system between remote terminals based on the FTP protocol (SdlFtp).

With the use of the PEC the identification of the submitting party is guaranteed, therefore there is no need to implement identification procedures prior to transmission. The Sdl will enter into contact with the submitting party for the first time when it will have received its first email message.

On the contrary, the transmission channels referred to in letters c) and d) require prior accreditation with the Sdl to establish the technical rules for the dialogue between the IT infrastructure of the submitting party and the Sdl. Upon completion of the accreditation procedure, the Sdl associates one seven-digit numerical code ("Recipient Code") with the activated channel.⁷

The electronic invoice is subsequently sent by the Sdl to the customer or client or, on behalf of the latter, to an intermediary, through the following methods:

- a) Certified email (PEC).
- b) Application cooperation system on the Internet (SdlCoop).
- c) Data transmission system between remote terminals based on the FTP protocol (SdlFtp).

For submission, the methods referred to in letters b) and c) require the prior accreditation process and, therefore, require the support of a software house which, acting as an intermediary, stipulates an agreement with the Sdl. On the other hand, even economic players wishing to receive electronic invoices via PEC will not be able to manage e-invoices independently, as they will need a software to acquire the original invoice in XML format and translate it into a file that is legible and usable. In fact, the electronic invoice received via PEC is presented in an "inconvenient" format that is illegible, as it does not allow the issuer or the object to be identified.

The issuer has to fill in the "RecipientCode" field of the e-invoice file according to the following procedures:

- a) Entering the recipient code provided by the customer, if the latter uses the reception methods referred to in points b) and c) (application cooperation system on the Internet or data transmission system between remote terminals based on the FTP protocol).

⁶ Without prejudice to the responsibilities of the party that sells the good or that provides the service, suppliers can use intermediaries for the submission of electronic invoices to the Interchange system (Sdl).

⁷ Instructions (in Italian and in English) available at the following link:

http://sdi.fatturapa.gov.it/Sdl2FatturaPAWeb/AccediAlServizioAction.do?pagina=accreditamento_canale

For the purpose of accreditation it is necessary for the submitting party to register a service agreement bearing a digital signature. The agreement aims to define the rules for dialogue between the submitting party and the Sdl. It should be noted that the accreditation procedure requires IT experts ("This section has been prepared for subjects who intend to register their own channel (Web-service, Domain Gateway or FTP) with the Interchange system") and economic players cannot do it on their own. In fact, software houses will be accredited with the Sdl managed by the Revenue Agency, which will assign to each of them their own "Recipient Code". The recipient code will not be unique but will be assigned to each software house accredited with the Sdl, which, subsequently, will have to send it to their customers so that they can issue and receive electronic invoices through the services provided by it. This code simply defines a virtual place where electronic invoices are sent, a sort of "folder" to which economic operators can access with their own credentials and have available all the invoices issued to them.

- b) Entering a conventional code "0000000" and filling in the subsequent field "PECRecipient" with the PEC certified email address provided by the customer.
- c) Entering only the conventional code "0000000" in the event that the customer i) is an end consumer, or ii) is a taxable person for whom applies the so-called "tax relief regime", iii) has not communicated to the issuer its recipient code or its own PEC certified email address.

To address invoices to the customer, the Revenue Agency provides a registration service through which the customers or the intermediary, acting on their behalf, can specify to the Sdl the preferred channel (referred to in a), b) and c)) for the receipt of the electronic invoice file.

Note! - The registration procedure, which allows the taxpayer to specify the electronic address to which invoices should be sent, is available by accessing the private web area on the Revenue Agency website, in the "Invoices and Charges" section.

Note! - Once the customer is pre-registered, the Sdl will send invoices and variation notes to the registered electronic address, regardless of what is specified by the issuer in the field "RecipientCode".

In the event that - due to technical reasons not attributable to the Sdl - delivery to the customer is not possible (for example in the case of an inaccessible electronic channel or full PEC mailbox), the Sdl makes the electronic invoice available to the customer in its private area of the Revenue Agency website. At the same time, the supplier is required to promptly notify its customer, using a channel other than the Sdl, that the original invoice is available to it in its reserved area of the Revenue Agency website. This communication can also be made by sending an hard copy of the invoice through traditional channels (email, etc.). If the customer is a private consumer, communication by direct delivery of a digital or analogue copy of the electronic invoice is mandatory, not optional.

Note! - From the reading of the Provision of 30th April 2018 it would seem to be clear that customers (with the exception of private consumers and taxpayers for whom apply the tax relief and flat tax regimes) cannot simply keep and store the hard copy, but have to necessarily collect the original invoice in XML format from the private web area.

Finally, among the solutions proposed by the Agency to facilitate the automation of processes and facilitate the work of VAT taxpayers, in addition to the app previously mentioned, a web service will be available for the generation of a QR code that can be shown to the supplier to allow it to automatically acquire the customer's VAT identification data. This QR code will be made available to all VAT taxpayers in their authenticated area of the RA website.

Digital storage of the invoice

Subjects who are resident, established or identified for VAT purposes in Italy may electronically store e-invoices and variation notes submitted and received through the Sdl using an electronic storage service (in compliance with the provisions of the Digital Administration Code, DAC) prepared by Sogei (company that manages the IT services of the Revenue Agency) and made available free of charge by the Revenue Agency.

In any case, in order to take advantage of the storage service referred to, economic operators must first of all accept the Service Agreement published in the reserved area of the Revenue Agency website.

As specified in the explanations of the Provision of 30th April 2018, the electronic storage carried out by the IT systems of the Revenue Agency is valid not only for tax purposes but also for civil law purposes. Therefore, signing the service agreement fulfils all the conservation obligations provided by Italian Ministerial Decree 17 June 2014 and referred to in Italian Prime Ministerial Decree 3 December 2013.

The electronic storage of documents is the only way to manage all IT files and dematerialised analogue documents in compliance with the law. Failure to comply with the regulatory and technical storage principles results in the uselessness of the electronic document, which may lose its legal validity vis-à-vis third parties in the event of a commercial complaint, legal action and in response to requests from public authorities.



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11. The outcome of the electronic invoice

Before forwarding the electronic invoice to the recipient, the Sdl ensures that the invoice file contains the mandatory information and is consistent with the data shown. The processing times of the Sdl range from a few minutes up to a maximum of five days, also considering moments of high concentration of electronic invoice submissions.

Two outcomes are possible:

- › Positive outcome: the invoice is considered issued with the consequent issuance of the delivery receipt by the Sdl at the moment in which the invoice is sent to the recipient or it is made available in the personal area of the Agency's website;
- › Negative outcome: the invoice is considered as not issued and the Sdl sends a rejection notice to the issuer, at the latest within five days from submission. Technically, the issuer will have to make an accounting variation with a reversal of the accounting entry, only for internal purposes (i.e. without sending any variation note to the Sdl), and then re-submit a modified and corrected document.

Some of the checks carried out by the Sdl include:

- › Check the identification and uniqueness of the submitted file (year and invoice number);
- › Check the file size
- › Check the validity of the information contained in the electronic invoice file (validity of the "RecipientCode" or the tax code or VAT number, their existence in the tax system).
- › Check the deliverability of the invoice.
- › Check the validity of the signature certificate if the electronic invoice file is digitally signed (e.g. signature certificate expired, revoked etc.).

For B2B transactions between private parties that are resident, established or identified in Italy, the so-called "customer's outcome notifications" have been eliminated, i.e. the possibility for the customer to accept or reject the electronic invoice.⁸ However, for the moment this simplification concerns only the mandatory invoicing between private individuals, re-establishing the normal commercial relations as the arena for any joint resolution. For relations with Public Administrations, the 15-day deadline to reject the electronic invoices received remains.

⁸ This option given to customers/clients is a prerogative only for the Public Administration.

The date when VAT is due and deductible

The chargeability date of VAT is identified by the date of issuance of the electronic invoice, shown in the "Date" field of the invoice file pursuant to art. 21 and 21-bis of Italian Presidential Decree 633/1972. Therefore the document is considered issued for the seller/service provider at the date of issuance of the sales invoice, with positive outcome confirmed by the SdI. Therefore, VAT will be due from the invoice date.

As regards the date from which the VAT is deductible, this is identified by the date of receipt (this is what is specified in the justification of the Provision of the Director of the Revenue Agency no. 89757/2018), i.e. with the date confirmed to the recipient by the digital transmission channels (SdI Coop and SdI Ftp) or with the date in which the taxpayer views the electronic invoice in its personal area of the Revenue Agency website, where it is archived by the SdI. Therefore, in order to deduct VAT in the monthly or quarterly settlement, the date of receipt of the e-invoice XML file has to be prior to the deadline for carrying out the periodic settlement of the referred month as per art. 1 of Italian Presidential Decree 100/98.

Note! - If the invoice is made available on the RA website of the customer, the SdI will inform the seller or service provider that the electronic invoice has been viewed.

In this regard, the exercise of the "right to deduct" is relevant, with particular reference to the possibility of deducting the input VAT related to invoices received between the 1 and the 16 day of a month in the VAT settlement of the previous month (i.e. received between 1 and 16 day of February with regard of January VAT computation). In Circular memo no. 1/E of 2018 the Agency reiterated that, in order to deduct VAT, it is required not only VAT to be chargeable but also the formal possession of the invoice. It would therefore not be possible to include in the VAT settlement of the previous month all the invoices received in the first 16 days of the following month. Therefore this could create a mismatch: if the supplier issues the invoice on 31st December and then the client receives it later on, like on 2nd January, it seems that the supplier could include his invoice within the VAT computation of December, while the client should include it in January computation, with a delay of his right to deduct the input VAT.

In addition, if the invoice is made available to the buyer in its personal area of the Agency's website, it is considered received on the date of viewing. A paradoxical situation could occur if the customer never views it, since the time horizon for the deduction would be extended ad infinitum.



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12. What are the opportunities

The introduction of mandatory electronic invoicing forces economic operators to adapt and prepare for the submission and receipt of electronic invoices. Although the difficulties of adjusting to the new invoicing process may seem greater than the relative benefits, there will also be opportunities arising from the introduction of mandatory electronic invoicing.

First of all, economic operators will be able to know immediately if the invoice they have submitted via Sdl is formally correct. So, for example, there should no longer be any problems related to the issuing of invoices to a non-existent VAT number, since when the invoice is submitted to the Sdl it checks the correctness of the content.

Furthermore, as regards the receipt of invoices, professionals will no longer have to wait for the customer to receive all the relevant documents for VAT purposes: in fact electronic invoices will be available in real time, which may reduce the possibility of errors.

Finally, the receipt of the electronic invoice through accounting software accredited with the Sdl will allow automatic book entry in the company's accounting system. The information of the supplier, the invoice amount, the date and the document number can be automatically imported. The designation of the cost centre and the amount of VAT that is deductible are the only information that will have to be manually attributed.



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13. Early electronic invoicing from 1st July 2018

As previously mentioned, the obligation to issue an electronic invoice is introduced early, starting from 1st July 2018, for the supply of motor fuels and for services rendered by subcontractors in the sector of public subcontracts.

Fuel sales

The obligation of the electronic invoice does not concern the supply of fuels in general, but only purchases of petrol and diesel intended to be used as fuel for motor vehicles.

With Circular no. 8/E dated 30th April 2018, the Revenue Agency specifies that the early stage of mandatory electronic invoicing excludes the supply of petrol used for motors that are part of heating systems, gardening tools and similar equipment. Therefore, these sales and those relating to fuels for automotive engines other than petrol and diesel (e.g. LPG) will be subject to mandatory electronic invoicing only from 1st January 2019.

Note! - For the sale of fuels used for motor vehicles other than petrol and diesel, the obligation to complete the fuel expense sheet remains.

In addition, the scope of the e-invoice for the supply of fuel only concerns transactions between taxable parties acting in the exercise of business, art or profession. For the sale of petrol and diesel fuel to private parties (B2C), the operators has to electronically submit all the daily receipts to the Revenue Agency.

At the same time, starting from 1st July 2018, for VAT deductibility purposes (art. 19-bis1, paragraph 1, letter d)) and the deductibility of the cost (art. 164, paragraph 1-bis Italian Consolidated Law on Income Tax), the payments related to refuelling must be done with traceable payment instruments.

The Provision of the Director of the Revenue Agency no. 73203/2018 has specified that, in order to deduct the cost related to the purchase of fuel and deduct the related VAT, traceable means of payments include:

- › Bank drafts or cheques, promissory notes and postal orders;
- › Electronic instruments including, for example: direct debit, bank or postal transfer and postal payment slip;
- › Debit cards, credit cards, prepaid cards or other electronic payment instruments available that allow debiting the current account.

It is specified that payments made through credit, debit and prepaid cards issued both by financial entities resident in Italy or with permanent establishment in Italy and by other financial operators will be considered perfectly valid for the purposes of VAT and cost deductibility (subject to the obligation of communication provided for by article 7, paragraph 6 of Italian Presidential Decree 605/73).

The Agency has clarified the operational methods in the case in which the payments of the fuel are made by the taxpayer in a mediated way. First of all, it dealt with a very common business practice: the case in which an employee refuels at a roadside petrol station during a business trip by paying with his or her personal debit/credit/prepaid card and then the employer refunds the corresponding amount, for example by bank transfer, together with the salary. According to the Agency, there is no doubt that the expense incurred by the employee refers to the business sphere of the employer and that, consequently, it is deductible from income (without prejudice to the ordinary rules of deductibility envisaged by the Italian Consolidated Law on Corporate Tax). Then, it considers the different services made available by economic operators of the sector (like cards, applications for smartphones and tablets) that allow the purchase of fuel by direct debit to the bank account or by credit card. According to the Agency, also in this case, the expense is undoubtedly related to the taxpayer and, therefore, is deductible.

The electronic invoice which has as object the sale of gasoline or diesel fuel does not necessarily have to contain the identifying elements of the vehicle (for example the number plate), on the contrary, this is mandatory when completing the fuel expense sheet. This information will only be optional and may be included in the e-invoice file in the "Vehicle" field to allow buyers to track the expenditure for income tax purposes. Instead, the "ItemCode" field must be completed (entering the word "CARB" [i.e. "FUEL"] followed by "ValueCode" which identifies the type of fuel invoiced) in the goods and services detail included in the electronic invoice file.

Note! - It is considered useful to specify the number plate on the invoice for the purpose of cost deductibility, as it may be required in case of controls to demonstrate the inherence, the attribution and the congruity of the purchase to the business, professional or artistic activity.

If other goods are purchased together with the fuel, including some not subject to the obligation of electronic invoicing from 1st July 2018, and these are shown on a single invoice, they must be invoiced in an electronic format. Simply stated, the company that intends to purchase petrol from a roadside petrol station and at the same time purchases services or other goods will have to obtain an electronic invoice to document the various purchases.

The issuance, submission to the SdI and receipt of electronic invoices related to the purchase of fuels for motor vehicles must be carried out according to the format and procedures envisaged for the overall implementation effective from 1st January 2019, as previously specified.

It will be possible to collectively document multiple sales of fuel by issuing a deferred invoice, i.e. a single invoice, to be issued by the 15th day of the month subsequent to the one in which the

operations were carried out, for all sales made to the same customer in a specific calendar month. To this end, each purchase of fuel must be noted on an analogical or computerised document that shows the date of refuelling, the information data of both the purchaser and the owner of the petrol station, the characteristics and the quantity of fuel purchased.

Note! - For self-service refuelling, once refuelling is finished the customer must remember to make the payment using one of the traceable means of payment (previously identified) and keep the receipt issued by the self-service distributor.

Further insight: "netting" contracts

The "netting" procedure involves the stipulation of two fuel supply contracts and involves three different parties:

- › The oil company.
- › The owner of the fuelling station.
- › The customer company.

The first contract is stipulated between the oil company and the owner of the fuelling station, while the second contract is stipulated between the user company and the oil company. The first contract requires that the operator of the fuelling station agree to carry out periodic services, which consist in the supply of fuel, to the user companies that have signed a contract with the oil company. The user company, by virtue of the second contract, receives a credit/debit/prepaid card or a voucher that it uses to refuel. Subsequently the oil company invoices the amount due to the user company. Naturally, the operator of the fuelling station also periodically issues an invoice to the oil company on the basis of the fuel supplied to the user companies.

Netting contracts therefore allow for the payment of the fuel at a later date. With reference to these contracts, the Revenue Agency confirms that it is still possible to use the cards issued to the user companies by the oil company. With regard to the deductibility of the purchase cost and the deductibility of VAT, these cards are considered suitable by the legislator, provided that the relationship between the fuelling station operator and the oil company and between the latter and the user company are governed by the traceable payment instruments identified by Provision no. 73203/2018 (i.e. credit cards, debit cards, prepaid cards, bank and postal cheques, etc.).

In addition, the Administration specifies that the payment obligation with these methods at the time of refuelling does not necessarily accompany the simultaneous issuance of an electronic invoice.

The Agency distinguishes between "single- use" and "multi-- use" fuel vouchers. If the voucher or card gives the user the opportunity to obtain supplies from stations managed by different oil companies, these qualify as "multi- use ".

In the case of "single-use" vouchers, in which the object and place of the fuel supply are already known at the time of issue or recharge (by "place" meaning the petrol stations operated by the same oil company that issues the voucher or the card), the electronic invoice must be issued immediately at the time of purchase or recharge by the user company.

On the contrary, in the case of "multi- use " vouchers there is no obligation for the oil company to document the sale of the voucher or the recharge of the card to the user with an electronic invoice. Only when fuel is supplied by the station operator to the user company that intends to pay for the

refuelling with the "multi- use" voucher will it be possible to document the operation with an electronic invoice, as at that time the relevant sale takes place for VAT purposes.

Sector of public procurement and subcontractors

From 1st July 2018 mandatory electronic invoicing will affect not only the direct relationships between contractor and Public Administration, already currently subject to this restriction, but also all relationships between the contractor and any direct subcontractors. Further subsequent relationships will not be subject to the early obligation.

For better understanding, let's look at a simple example. Suppose we have three companies: A, B and C. Company A signs a contract with the Public Administration and subcontracts work with company B for related tasks. At the same time, B makes use of goods and services rendered by a further party: company C. The services rendered by A to the Public Administration and from B to A must necessarily be documented by electronic invoice effective 1st July 2018. On the contrary, the services or sales made by C to B will remain excluded from the obligation of electronic invoicing until 1st January 2019, the date from which general electronic invoicing will come into force.

Note! - For the service provided by A to the Public Administration, the provisions of Italian Ministerial Decree no. 55 of 3rd April 2013 remain valid, currently followed by companies that interface with the PA, required to issue electronic invoices. For the service provided by B to A, on the other hand, the instructions provided by the Revenue Agency with the Provision dated 30th April 2018 are valid.

The main differences are shown below:

- » For electronic invoicing towards the PA the so-called "customer's outcome notifications" are maintained. These allow the PA, once having received the invoice and within 15 days from the receipt, to send to the company a notification of acceptance or rejection. In case of rejection, the issuing company must correct the invoice and send it back to the PA. For electronic invoicing between private parties (between B and A in our example) this possibility is not provided. The invoice can be considered omitted or rejected at the latest within five days from submission.
- » The addressing of the e-invoice to the PA is done by specifying in the electronic invoice file the unique identification code of the office the invoice is intended for. In the relationship between private parties, for the purpose of submitting the electronic invoice, the recipient code is not necessarily to be specified on the invoice because, on the one hand, not all businesses are required to request one (simply being able to use PEC certified emails), the Agency allows the businesses to choose the preferred method of reception (by alternatively communicating the PEC certified email address or the recipient code to the SdI), which will make it irrelevant what is materially specified in the invoice by the supplier in the file's "RecipientCode" field.
- » When the SdI is unable to deliver, if the invoice is addressed to a PA, after 10 days from the sending of the notification of non-delivery the SdI will send the issuing company a certificate of successful submission with the impossibility of delivery. This certificate consists of a file (containing both the original invoice and an XML notification file) that must be forwarded by the issuing company to the PA using different channels. In transactions between private parties, the document is made available to the customer or client in its personal area of the

Revenue Agency website, and, at the same time, the seller or service provider informs the latter that the document is available in that area (also attaching a paper or digital copy of the invoice).

Finally, it is specified that the electronic invoice file must include the Tender Identification Code (CIG) and the Unitary Project Code (CUP) in one of the following information blocks:

"PurchaseOrderData", "ContractData", "AgreementData", "ReceiptData" or "AssociatedInvoiceData". The CIG and the CUP must be included not only in electronic invoices issued to the Public Administration, but also in those issued by subcontractors..



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14. Services provided by the Revenue Agency

In order to be able to issue, submit and receive electronic invoices in XML format, the Revenue Agency will provide various services to taxpayers. These services will be available free of charge, and, as stated in the press release of the Agency of 30th April 2018, the main objective is to "make it easier to issue electronic invoices and reduce the time required to do so".

In particular, to simplify the new invoicing process, the following services will be made available:

- › A computer program for the preparation of electronic invoices.
- › A web service and dedicated app for issuing and submitting the electronic invoice to the Sdl.
- › A service for the generation of a QR Code to automatically acquire the identification data (VAT identification information) of the customer or client and the digital address. The QR Code is made available to all VAT taxpayers in their personal web area of the Agency's website.
- › A registration service through which the customer or client, or a delegated intermediary, can, by registering, specify to the Sdl the preferred digital channel for receiving electronic invoices. The Sdl will always send invoices and variation notes to the registered electronic address, regardless of what is specified by the issuer in the field "RecipientCode" or "RecipientPEC".
- › A service for searching, viewing and acquiring electronic invoices issued and received through the Sdl, available in the personal area of the Revenue Agency website. Invoices will be available in this area until 31st December of the year following the date of receipt or submission of the invoice via Sdl.
- › Web services for experimentation of the electronic invoicing process, available at the link: <http://www.fatturapa.gov.it/export/fatturazione/it/sperimentazione.htm>.
- › A free electronic invoice storage service. Upon acceptance of a service agreement with the Revenue Agency available in the personal area of the Agency's website, it will be the Agency itself that stores electronic documents on behalf of taxpayers.



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15. UE authorization

With execution decision no. 593 dated 16th April 2018 the European Union authorised Italy to establish the obligation of electronic invoicing between taxable parties and to final consumers, derogating articles 218 and 232 of Directive 2006/112/EC.

The special exemption measure has a temporary effect: from 1 July 2018 to 31 December 2021. The extension of the exemption coincides with the introduction in advance of mandatory electronic invoicing for the sale of petrol and diesel used as motor fuels as well as for services rendered by subcontractors in public contracts. However, in order to extend the electronic invoicing obligation after 2021, Italy will have to present a report to the European Commission on the effectiveness of the special measure in combating tax evasion and simplifying VAT collection, providing an assessment of results achieved.

Discrepancies with national legislation

The European execution decision does not seem to fully authorise what is defined by the Italian legislation:

In paragraph (1) of the Council decision of 16 April 2018, reference is made to "mandatory electronic invoicing for all taxable persons resident in the territory of Italy". Therefore, taxable persons who only identified themselves in Italy for VAT purposes by appointing a tax representative or by direct identification do not seem to be considered.

According to an opinion published in recent weeks, the electronic invoices storage service made available free of charge by the Revenue Agency through the acceptance of the Service Agreement would be in contrast with Directive 2006/112/EC, which art. 244 establishes that "each taxable person must provide for the storage of copies of the invoices issued by itself, by the purchaser or by the recipient or on its behalf, by a third party, as well as the invoices received". In the absence of a specific waiver for this article, Italy would not be authorised to exempt taxable persons from the obligation to store their electronic invoices.



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IV. About us

Rödl & Partner

As lawyers, tax advisers, management and IT consultants and auditors, we are present in 108 own locations in 50 countries. Worldwide, our clients trust our 4,500 colleagues.

In Italy Rödl & Partner is located in Milan, Rome, Padua and Bolzano, with more than 180 professionals willing to provide consulting services to both national and international clients. Consulting activity embraces different fields, from commercial law, tax, company and labor law to assistance in companies buyouts, renewable energy sector, as well as audit procedures with regard to the application of international accounting standards.

Beyond the main European countries (Austria, Belgium, Croatia, France, Germany, Italy, Baltic Countries, Poland, Czech Republic, Slovakia, Slovenian, Spain, Russia, Romania, Ukraine and Hungary) Rödl & Partner is located in the United States, in Brazil, in South Africa, in Middle East (United Arab Emirates and Qatar) and in Far East (China, India, Indonesia, Malaysia, Singapore, Thailand e Vietnam).



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