

This is a basic survey on legal aspects of e-invoicing and e-archiving of electronic invoices in Italy. If more informations are required on legal and fiscal compliance of an e-invoicing project which involves italian companies, please feel free to contact the author of this study.

1. E-INVOICE ISSUING

In Italy, the applicable law¹ allows a third party service provider to issue the invoice “on behalf of the supplier”, without the “in the name” provision.

This because the legislator wanted to exclude explicitly the italian legal provision of a *mandato con rappresentanza* (possible translation is “mandate with representation”).

In the case of third party issuing, the applicable law also says that the (fiscal) responsibility of the emission of the invoice is entirely upon the supplier.

The consequence of this is that on the invoice issued by the third party it must be clearly stated:

Fattura compilata da [nome del terzo] per conto di [nome del cedente].

A possible translation of the required statement is:

UInvoice filled out by [name of the third party service provider] on behalf of [name of the seller].

2. INVOICE ISSUANCE OUTSOURCING AGREEMENT

Italian law does not regulate the agreement between the supplier and the third party.

However the Italian tax Authority in a very important official document² says:

Even without an explicit law provision, the supplier should give prior authorization to the third party to issue the invoice , and both of them should agree on the procedures to be adopted.

The contents of the agreement are also extremely important for the considerations made in the following paragraph n.4 (E-invoice Signing).

¹ Legislative Decree n. 52, dated 20 february 2004

² Agenzia delle Entrate, Circular Letter n.45/E del 19.10.2005

3. E-INVOICE FORMAT

Some document formats make it possible to make use of hidden codes. Hidden codes allow a type of programming which can add interactivity and functions to documents. These hidden codes are executed every time the document is opened. These mechanisms can pose a great risk to the e-invoice process.

In fact, the hidden codes mechanism can be used to change the document presentation (i.e. its appearance) while not affecting the document content (i.e. the bytes it is made of). This would cause the presentation to be changed without affecting the electronic signature validity, making it possible to perpetrate frauds.

According to this, Italian law requests static non modifiable document format to be used, such as XML, PDF, TIFF.

4. E-INVOICE SIGNING

In the Italian legislation, each e-invoice must be digitally signed with a qualified electronic signature (QES), in order to guarantee integrity and authenticity.

In case of third party issuance, the technical process (and, consequently, the existing agreement between the supplier and the third party) is extremely relevant in order to identify who must be the signer of the invoice.

In fact, the Italian Tax Authority Circular letter n.45E/2005 says that, depending on the agreement between the seller and the third party, two different situations may occur:

- a) the seller sends to the third party the final document (invoice) ready for transmission to the recipient. In this case the issuer is the seller, so he has to digitally sign the invoice.
- b) the seller sends to the third party a “stream of data”, which will be aggregated by the third party in order to issue the final document. In this case the issuer is the third party, so he has to digitally sign the invoice.

In order to comply with the Italian legal requirement, we consider necessary to specify in the agreement how and which kind of data are provided from the supplier to the third party.

5. E-INVOICE TIME -STAMPING

In the Italian legislation, the single e-invoice must be digitally signed with a qualified electronic signature (as seen in previous paragraph) and also must be issued with a “Time mark” (*riferimento temporale*).

In the Italian law a Time mark is a “ low- effect” Time Stamp: we could simply say that it is a Time Stamp **not** issued by a Time Stamping Authority.

If each single invoice is issued with a QES and a Time Stamp (issued by a Time Stamping Authority) is applied on the single e-invoice, this is absolutely correct for the Italian tax authority, because Time- Stamp is a time information with a stronger legal effect.

In Italy law , in fact, a Time Stamp is a time-information *opponibile ai terzi*. Possible translation is: “capable of being legally opposed to third parties”.

6. E-INVOICING AGREEMENT

In Italy, a prior agreement between buyer and supplier is requested by the law³. This agreement need not to be explicit, however it is advisable to have a formal prior agreement in which the buyer explicitly agrees to receive electronic invoices from the supplier.

7. INVOICE RECEIPT (AND/OR SIGNATURE VERIFICATION) OUTSOURCING AGREEMENT

In Italy there is no obligation to document and to store the verification results of the invoice’s electronic signature. Consequently, an agreement for the outsourcing of signature verification is not necessary.

8. E-INVOICE TIME OF ISSUANCE

An important legal requirements in Italy for e-invoicing is the timing of the storage process, as explained in the following paragraphs.

³ art.21, Presidential Decree 633/1972 (VAT law)

Every predefined time period (at most every 15 days) the third party storage provider (see paragraph 9.2) has to apply a qualified signature (QES) and a timestamp to the set of stored documents.

For the invoices issued, the 15 days period starts from the date of issuance.

For the invoices received, the 15 days period starts form the date of receipt.

Therefore, it is very important to define exactly these two dates.

9. E-INVOICES STORAGE

Italian law about storage of electronic invoices have a particularly detailed list of requirements.

9.1 Responsible of the electronic storage

First of all, any company who digitally stores his fiscal documents and records (purchase invoices, sales invoices, Vat registers, delivery notes, etc.) has to appoint a person (natural or legal) who will be the “ Responsible of electronic storage” (“*Responsabile della conservazione sostitutiva*”).

The applicable law⁴ lists a detailed series of tasks for the Responsible person:

- a) he defines and keep documentation about the storage solution according to the kind of documents to be conserved. He organises and manages security procedures in order to ensure the appropriate storage and the accessibility of the stored documents;
- b) he archives and gives evidence to the following informations:
 - 1) description of the content of the set of archived documents;
 - 2) identification of the Responsible of electronic storage;
 - 3) identification of other people involved (if explicitly delegated in doing part of the process) ;
 - 4) security back-ups informations.
- c) he keeps and give access to a storage software archive in the different versions;
- d) he audit the system and software functionality;

⁴ art. 5, CNIPA Resolution n.11, dated 20 february 2004.

e) he adopts the necessary measures for the physical and logical security of the system of storage and back-up copies;

(...)

h) he periodically verifies , at most every 5 years, the legibility of stored documents, adopting necessary measures to manage the technology change during storage period.

9.2 E-invoices storage abroad by a third party

Under Italian law an Italian company is allowed to store electronic invoices abroad (in another EU country)⁵.

If invoices are stored abroad, a notification to Tax Authorities is required (see paragraph 9.7).

If invoices are stored abroad, the Italian company has to guarantee on line access from his premises to the stored documents. Upon request from the tax authorities, all the documents and the certificates of authenticity and integrity has to be eventually printed out and /or memorized into another electronic media.

9.3 Signing and timestamping a set of invoices

A very important law requirement⁶ is the one which periodically involves the “Responsible of the electronic storage”.

At least every 15 days (from the date of issuance in case of sales invoice – from the date of receipt in case of purchase invoice) he has to apply his QES and apply a Time –Stamp to the set of electronic invoices to be stored.

Technically the Responsible will have to create a separate folder with invoices hashes and, at most within 15 days, apply his qualified digital signature and a qualified timestamp (issued by a TSA).

In case of controls and access by Tax Authorities, at any time, this periodical task has to be eventually anticipated⁷.

⁵ Storage of e-invoices is not possible in a country with which no legal instruments exists relating to legal mutual assistance.

⁶ Art.3, Ministerial Decree dated 23 january 2004

⁷ Agenzia delle Entrate, Circular Letter n.45/E del 19.10.2005

9.4 Storage VAT requirements

Another very important law requirement about electronic storage can be called “the same format storage principle”: documents of a certain type should all be stored in the same format.

In case of invoices, if purchase e-invoices are to be stored electronically, paper purchase invoice must also be stored in electronic format.

In another words, where a Italian company agrees to receive electronic purchase invoice, it must electronically store all its purchase invoices (so including paper ones)⁸.

It is to be noted that if the italian company receive (or issue) ONLY electronic invoices, the “same format principle” is naturally observed.

This law requirements has recently been modified by the Tax Authority Circular Letter n.36E/2006⁹.

A company has now the Upossibility Uof storing electronically only e-invoices (Sales or purchase invoices), and Ucontinue to store in paper the paper invoicesU.

In this case, for Vat purposes, company will have to adopt a separate VAT register (Registro sezionale) where electronic invoices have to be recorded.

The other condition in order to choose this possibility is that the same supplier (or the same buyer) must send (or receive from) the company “one format only” invoices.

In other words, this condition means that one particular supplier can send either electronic-only or paper-only invoices to the company.

PURCHASE INVOICES FORMAT	STORAGE ALLOWED	ELECTRONIC STORAGE VAT REQUIREMENTS
Only electronic	Electronic	None
Electronic and paper	Electronic	Conversion of all paper invoices in electronic ones.
Electronic and paper	Electronic for e-invoices and Paper for paper invoice	Use of a separate Vat register for e-invoices. The same seller must issue “one format only” invoices to the buyer

Table 1: Vat requirements in case of PURCHASE invoices storage

⁸ Electronic purchase invoice, in fact, cannot be stored in another format than the original.

⁹ This was, in fact, the reason why e-invoicing was not easy to be adopted by Italian companies.

SALES INVOICES FORMAT	STORAGE ALLOWED	ELECTRONIC STORAGE VAT REQUIREMENTS
Only electronic	Electronic or paper	None
Electronic and paper	Electronic or paper	If electronic storage is chosen, conversion of all paper invoices in electronic ones.
Electronic and paper	Electronic for e-invoices and Paper for paper invoice	Use of a separate Vat register for e-invoices. The seller must issue “one format only” invoices to the same buyer

Table 2: Vat requirements in case of SALES invoices storage

9.5 Special requirements for indexing and search possibilities

According with art.3 of Ministerial Decree 23 January 2004, the process of storing invoices on electronic media must make the invoices searchable with the following data:

- name, surname or company title
- tax identification number (*codice fiscale*)
- VAT identification number (*Partita IVA*)
- Date
- logical associations of these elements

9.6 Duration of storage

Under Italian law, the compulsory storage period for invoices is 4 years^{F10}F (VAT law) and 10 years (accounting and commercial law).

¹⁰ In case of a litigation with the tax office, invoices have to be stored even more, up to final settlement (Article 22 of Presidential Decree no.600 of 1973).

9.7 Notification of the place of storage to Tax Authorities

If invoices are stored in another EU member state, a notification to the tax authorities is required within 30 days from the beginning of storage.

The notification consist in the fulfilment and transmission to the tax authority (*Agenzia delle Entrate*) of VAT form type AA7/8.F¹¹F

9.8 Notification to Tax Authorities of the annual thumbprint

At the end of each tax year, within 30 days from the declaration of income terms, the taxable person will have to send to the tax authorities the annual thumbprint of the whole electronic archive.

This notification is now under suspension. This means that , until a special law provision will be issued, the thumbprint must not be transmitted.

The law provision (*Provvedimento*) which has to be issued^{F¹²F} will explain technically the procedures in order to create and electronically send the annual thumbprint.

9.9 Technology change during storage period

Over a long period of time, there could be several technology changes. In such cases the “Responsible of the electronic storage” must be able to convert the data into another form, if needed, or to retain the hardware/software that will enable the data to be read from the older technology.

If a conversion in another format is necessary , Italian law request the presence of a public notary in the process (called “*riversamento sostitutivo*”).

The public notary shall then digitally sign with his QES and apply a Time Stamp to the newly formed electronic storage.

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¹¹The form is available at this internet address:

<http://www.agenziaentrate.gov.it/ilwcm/connect/Nsi/Strumenti/Modulistica/Modelli+di+dichiarazione/Dichiarazione+inizio+variazione+cessazione+attivita/>

¹² art.5 of Ministerial Decree 23 january 2004