

INFORMATIVE NOTE

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ELECTRONIC INVOICING – ISSUANCE, MAINTENANCE AND STORAGE

Decree-Law nr. 196/2007 of May 15th now governs the technical conditions for the issuance, maintenance and storage of invoices or equivalent documents issued by electronic means, under the terms of the VAT Code.

The referred Decree-Law is framed under the measures that have been adopted to simplify, modernise and harmonise, in what concerns VAT, several aspects and conditioning factors related with the invoicing obligation. Therefore, it complements the measures set forth in Decree-law nr. 256/2003, of October 21st, 2003, that transposed the Directive nr. 2001/115/EC of the Council of December 20th, 2001 to the national legal system and in Decree-law nr. 238/2006, of December 20th, 2006.

As particularly concerns the maintenance of the invoices and of equivalent documents issued by electronic means, this had already been contemplated in the VAT Code, by the above referred Decree-laws, which approaches the principles and general conditions for its use, however, leaving for special legislation the regulation of aspects related with the legal framing concerning the specifications of a data processing and technical nature.

Therefore, Article 52, nr. 7 of the VAT Code, together with the above referred Decree-Law nr. 238/2006, provides the possibility to store by electronic means invoices or equivalent documents, sales receipts or any other documents of a tax relevance, provided processed by computer.

However, considering that to-date the technical conditions for electronic storage had not been regulated, companies had the obligation to maintain a paper copy of invoices or equivalent documents issued by electronic means, fact that evidently misrepresented the simplification regime.

Consequently, this Decree-law now attributes a practical application to the provisions of the referred Article 52

of the VAT Code, by regulating the technical conditions for the issuance, maintenance and storage of invoices or equivalent documents by electronic means. In this manner, the storage of invoices by electronic means is permitted, provided that complete and on-line access to the data is guaranteed to the Tax Administration and the integrity of the origin and the content is assured.

For that purpose, the computer systems for the issuance, receipt or storage of invoices or equivalent documents may be totally or partially outsourced to third parties and must guarantee the following functionalities:

- The authenticity of origin of each electronic invoice or equivalent document;
- The integrity of the sequential numbering of the electronic invoices or equivalent documents;
- The chronological validity of the messages issued as electronic invoices or equivalent documents;
- Storage, in computer files, of the invoices or equivalent documents issued and received by electronic means. Storage is made in order to assure: (i) the realisation of controls that assure the integrity, accuracy and reliability of the storage; (ii) the execution of the functionalities destined to prevent the undue creation and to detect any alteration, destruction or deterioration of the stored records; (iii) the recovery of data in the case of any incident; (iv) the reproduction of readable and comprehensible copies of the data recorded.
- The maintenance during the period foreseen in Article 52, that is, during the following ten calendar years, of the authenticity, integrity and availability of the original content of the invoices and equivalent documents issued and received by electronic means. Invoices must be maintained without alteration, by chronological order of issuance and receipt, this data to be contained in the computer system, in order to guarantee an exact and complete transfer to the storage files;
- The non disclaiming of the original and receipt of messages;
- The impossibility to duplicate invoices or equivalent documents issued and received by electronic means;

- Mechanisms that permit the verification that the certificate used by the issuer of the electronic invoice or equivalent document has not been revoked, has not expired or been suspended on the date of respective issuance. Electronic invoices may be issued by electronic means, provided accepted by the recipient, and one of the following procedures must be adopted to guarantee its authenticity of origin, as well as its integrity of content: (i) the affixing of an advanced electronic signature, or (ii) the use of an electronic data interchange system "European EDI type Agreement".

As concerns the guarantee of complete and on-line access to the storage of electronic invoices, it is furthermore important to note that the Tax Administration may verify on the premises of the taxable person, as well as on the premises of other entities that render electronic invoicing services, the conformity of the system used with the demanded legal requirements.

Supervisory actions may be carried out as follows:

- Direct access to the supporting invoicing computer system to consult the data with tax relevance, through the use of adequate hardware and software, of the taxable person or of the third party outsourcing entity;

- Request of delivery of the relevant data in a readable format;
- Copy of the data to a software storage system.

As concerns access to information, it must be provided through:

- Instruction on the procedures to be adopted to access the supporting invoicing computer system and to consult the stored data, even if the exploitation of the computer systems is effected outside the country;
- Documentation referent to agreements entered into between the issuers and recipients of the invoices issued by electronic means that permits the interpretation of information stored;
- User supporting technical documentation of the computer invoicing systems by electronic means that permits the interpretation of information stored.

This Decree-law enters into force on 20/05/2007.

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