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The B2B electronic invoicing,
between the European system
transition and anti-fraud
mechanisms of value-added
tax and a momentum for
accounting operational
performance improvements

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Abstract

The theme of tax documents "dematerialization", issued in the context of taxable business operations, is one of the main elements of discussion within the reform processes of the European Digital Agenda as in those concerning the streamlining of bureaucratic procedures with the aim at increasing Italian efforts to fight VAT evasion. Among all the digital novelties, the one concerning the obligation of electronic invoicing within B2B and B2C operations has aroused greater curiosity and interest.

Electronic invoicing plays a fundamental role for tax purposes, with particular reference to the aspects linked to the fight against tax evasion. In fact, the use of electronic invoicing allows administrations to carry out their checks for VAT purposes by facilitating an easier crossing of fiscal information. As highlighted in the technical report associated with the Law Decree n. 193/2016, the VAT gap in Italy is among the highest in the European Union and is due, very often, to the failure to certify and report revenues and compensation or fraud. The Italian Revenue Agency will have the widespread availability of invoice data with the objective of accelerate audit procedures and VAT controls. The electronic invoicing system is part of a greater process of reform of the control mechanisms as well as of the revision of the European Union rules aimed at identifying new ways of carrying out trade between the States of the Union and reforming the rules for applying the VAT between Member States.

Preamble to the reading

The innovation process and reform of administration relationships among citizens taking place over recent years throughout Europe, involve a strong administrative and structural simplification, with particular attention to services supply changes, backed up and encouraged by the ever-increasing communication opportunities, given by IC technologies, between administrations and taxpayers. The rules dedicated to the transformation of public documentary systems issued in recent times, push towards the complete procedures automation through tools such as the IT protocol, electronic classification and storing systems, paper documents digital transfer and their electronic creation. As is well known, ICT can bring significant benefits to organizations, impacting significantly on the company's activities, and in particular, allow to achieve greater levels of efficiency, to take advantage of more information resources, to increase in-house knowledge and skills, to be more effective and to expand market opportunities. It is therefore clear that the digital transformation within organizations, in both public and private domains, is a process that should be strongly supported in order to influence competitiveness and support development.

The present work aims to study and analyze the obligation of electronic invoicing, introduced in B2B and B2C operations, in its multiple dimensions. Particularly, this work is based on an evaluation and review of the different study approaches on the subject, with a specific treatment of the rules that characterize it and which have undergone a continuous regulatory change and a constant evolution in recent years. A particular reference will be given to the strategic role it has been given, in the wider European program of renewal and digital modernization, which takes the name of the digital single market, and the importance it has as a tool for the fight against VAT fraud, both at Community level and at national level.

In Italy, the size and evolution of VAT evasion phenomena is linked to factors that affect the level of tax pressure, the need for reform in the tax system, the efficiency of the tax administration, a taxpayer non-compliant culture with respect to tax

obligations "seasoned" with a complex tax system. Compliance problems are a permanent factor within the Italian tax system notwithstanding the ever-increasing several legal actions to improve the efficiency of the tax system. For a more systematic approach to establish new prevention tax VAT evasion strategies, evasive and elusive phenomena were classified on the basis of broad categories of tax payers, i.e. large companies, medium-small enterprises, self-employed workers, non-commercial entities and individuals, to which different evasion fighting systems are linked. It is of particular relevance to increase cooperation between the various national and Community institutions; teamwork is an added value to the prevention and combating misconduct system in order to set down action plans in synergy with agencies and tax police on priority issues. Improving the use of databases involves the process of crossing and merging fiscal information from different data sources to obtain more effective inspection interventions, expand the information available to the tax authorities and increasing their use naturally leads the quality level of tax assessment betterment and avoids waste of public resources. The use of traceable payment instruments and electronic invoicing would allow important results in the fight against the evasion and recovery of unpaid VAT, allowing for crossings and feedback of information in an automatic and much faster way. Preventing and combating tax evasion as well as tax avoidance is a priority of the Financial Administration to which every rule and regulation of the Central Government and the Ministry of Economics and Finance is designed and amended for. VAT fraud enforcement coordination must be improved to suppress such a behaviour that causes damage at national and EU level by altering free competition, favouring joint and simultaneous interventions with foreign tax authorities to allow multilateral controls.

VAT has some features that make it easy to let taxpayers free to perform fraudulent practices, but, despite this, its operational mechanism cannot be changed because otherwise the principles of objectivity, neutrality and transparency, that characterize VAT in the internal and international sphere, would be threatened. VAT affects, at each step of production and sale, the increase in value of the goods or services and is neutral for the those registered for VAT purposes, because it is

always recovered by the buyer as long as it is not a final consumer. Neutrality makes it possible to avoid cumulative effects and to guarantee tax transparency on trade and business operations: VAT is collected on invoices issued and its settlement scheme is based on the tax deductibility right which emerges from purchase invoices receiving. This mechanism makes it easy to evade tax through the creation of false purchase invoices that allow taxpayers to increase the VAT to be deducted and reduce the payment of tax to the tax authorities. Even in the case of intra-Community transactions where it is foreseen for supplies within the EU between tax subject the placing under taxation in the State of destination, VAT particular scheme is likely to bring about fraudulent practices since the national operator could purchase from the EU supplier without paying VAT.

The Commission has recently introduced new intra-Community standards, considering them the vehicle for intervening on the principles of VAT system as a whole.

The European reform that aim to start to change the VAT scheme currently in place, is contained in the Directive n. 2017/2455 which includes new several regulations on sales and services, different from those outlined in the document COM (2017) 0251, which outlines the definitive regime for intra-union transactions between taxable persons.

Particularly, in the second and third chapters the obligations strictly related to this new invoicing system and to the e-file issues of exquisitely operational nature will be discussed, as well as a discussion on the wider world of the instrumental obligations intended as those requirements for the correct determination and settlement of VAT and the role that the electronic invoice plays in this context.

The electronic invoicing, besides having significant effects on tax collection systems and on companies' business processes, it is estimated that it will also have an impact on the organization of tax consultant offices, which will increasingly be called upon to carry out business consulting activities, and no longer for everyday accounting operations, which will have an increasingly marginal role. The historical moment that is characterizing the country, outlined by a strong economic and

social transformation, determined by the increasingly pervasive use of technology, is leading to the need to acquire new competences that once were unnecessary. The obligation of electronic invoicing, if on the one hand it will lead to a very strong impetus to the automation of accounting records as a significant number of sale and purchase invoices of each customer will be mechanically recognized, on the other hand there are all the prerequisites for starting a tax simplification, in which tax professionals may no longer be involved in complaining with certain regulatory obligations, such as the keeping of VAT records, the "spesometro" form, the annual VAT returns or, in a medium-long term vision, the annual tax returns. Technology is making huge strides, and it is advisable to avoid being impassive in the face of the general obligation of electronic invoicing. Accounting offices and tax professionals would be less necessary in performing and fulfil accounting and invoice recording requirements. In other words, the flat-rate fees agreed with its accounting customers, on which many professional firms base their profitability and sustainability, is in danger of being strongly attacked over the next two years either because the perceived value of customer service will drop even more or because of a possible and probable competitive pressure on prices. During the first year after the introduction of the electronic invoicing obligation, professionals will have to take and capture strategic opportunities that underlie the "simplification" process that the Agency has initiated and intercept the path of strategic and digital evolution that is characterizing the Professional world. To this end, the last chapter will focus on the effects that e-invoicing will produce on the degree of efficiency of the accounting process.

Chapter 1

E-Billing: changes taking place within the European context and outlook for the future

Since its establishment on the 1957 with the Rome Treaty, the European Union, together with its institutions and the Member States, is carrying out new reforms and policies renewing for European citizens' better lives and a greater Member States law uniformity. Alongside this homogenising process, the EU has got to get with the continually evolving global markets and the multiple innovative ways through which organizations as a whole, i.e. corporations, firms, people, foreign States, Governments, compete throughout the international landscape¹.

Such policies have been for years at the centre of an imposing series of changes, aimed at creating structures oriented towards effectiveness and efficiency principles. The EU renovation process is also accelerated by the "never stationary" ICT (Information and Communication Technologies) deployment², that have laid the foundations for the creation of an increasingly direct relationship between citizens and institutions. The global economy is becoming even more digital: information and communication technologies are no longer a business area on their own but the basement of all the latest economic, financial, manufacturing and cooperation systems. As integration of all of our society spheres increases, ICTs create new needs to be fulfilled and transform the way people lives.

Changes are such that they have to bring possibilities for innovation and more employment, but also give to Public Administration political and legal issues which require a coordinated action at European level. Within the European context, new forms of participation have been introduced that help public actors to act in an increasingly complex and competitive environment, where knowledge lies not only in institutions, but also in individual citizens, associations, local communities and

¹ Giubboni S., *"Immigrazione e politiche dell'Unione Europea: dal Trattato di Roma alla Costituzione per l'Europa"*, inside *Giornale di Diritto del Lavoro e di Relazioni Industriali*, n. 106, 2005.

² On the point see Bracchi G., Capra E., *"Tecnologie ICT e innovazione: il posizionamento dell'Italia"*, inside *Economia Pubblica*, n.1, 2004.

professionals.

First steps toward a Community Strategy linked to the information society date back to the 1984, when ICTs R&D activities were first initiated within the ESPRIT (European Strategic Program on Research in Information) and then carried on with the RACE program (Research and Development in Advanced Communications Technologies). During the Feira European Council of June 2000, the European Commission has proposed its first digital action plan "eEurope 2002", which mandated itself to: 1) ensure cheaper, faster and safer Internet access; 2) encourage investments in this field; 3) provide infrastructure improvements and promote services, apps and contents on the net boosting job creation. Building on the achievements made with "eEurope 2002" plan, the European Union launched and established "eEurope 2005" action plan on June 2002 followed by "i2010" document paper through which develop an information and knowledge-based society across Europe and stimulate the continental economic growth³.

The European Digital Agenda constitutes the last important intervention by the European Commission establishing the pillars on which each Member State must base its digital strategies. The Agenda has a multi-year time horizon and deals with a series of key actions to implement at the hands of each EU State within the time limits required by European Directives.

The aim of this chapter is precisely to examine and discuss the last measures promoted by the European Commission within the digital and technological context with specific reference to the administrative data and invoices digitisation. Specifically, according to the European Commission instructions given to the Member States as regards to the interpretation of 2010/45/UE Directive, the electronic invoice is equalled to the paper invoice and must contain the elements set out by the 2006/112/CE Directive. The discussion will continue addressing both the main expected benefits desired by the Europe as a whole and the possible barriers, legal and structural, for the attainment of a more transparent and faster

³ De Pietro L., Sanna Artizzu M.A., "*L'Agenda digitale Europea 2020*", educational material produced by Formez PA within the E-leadership Project, in agreement with the Sardinia Region, 2017. Available at: http://formazione.formez.it/sites/all/files/agenda_digitale_europea.pdf.

VAT clearance and communication system. Further consideration will be given to the e-invoicing development in the European Union and the maturity level reached by each Member State behind the electronic invoice adoption. Finally, outlook for the future and some personal conclusions regarding e-invoicing are drawn.

1.1. The European Market for digitisation

The technological transformation is affecting all the sectors of the modern life and it is expected that this process will continue. "European Market for digitisation" encompasses all the aspects where automation and information translation into computer language is possible. This digital evolution should not be seen only as a way to enhance public or private services affordability and accessibility, but also as a key variable to create growth and more investments and job opportunities. Digitalisation of some existing administrative and manufacturing processes potentially impacts on the way people operates and the time needed to perform activities they're hired for. Both ICT usage and investments in digitalization are positively related to labour productivity improvement, with a rate of return of about 37 percent, which means faster and more efficient transactional and producing processes⁴. Furthermore, it is worth outlining that data becomes cheaper and they can be promptly used by users and policy makers to accompany law implementation, investigate and revise strategies adopted in a short time.

The European Continent, together with its Member States, has the ability to be at the top of the global digital economy, but does not exploit it at best. The process to accelerate the Continent digitalization is slowed down by the different cultural, infrastructural and legal environment which characterize each State within Europe. It is estimated that a fully functioning digital market could bring up to EUR 415 billion a year to the continental economy⁵. That's why the European Commission undertook to draw up and enforce the Digital Single Market Strategy, which will be

⁴ Hyunbae C., "The impact of information technology on labour productivity growth: evidence from five OECD Countries, 1970-1990", inside Korean Economic Review, Volume 23, No. 1, 2007, pp. 23-28.

⁵ "A Digital Single Market for Europe – Analysis and Evidence", Commission Staff Working Document, European Commission, 2015.

largely developed in the subsequent sessions.

1.1.1. Focal points of the Digital Agenda for Europe

Heir of the i2010 Strategy, launched in 2005 by the European Commission in order to effectively promote the media and information society, the Digital Agenda for Europe (hereafter EDA) is a set of action proposals that European Countries will have to undertake and which will define the scenario for the transformations that the increasingly digitized society will carry in the long run towards a smart, inclusive and sustainable growth. The Agenda is one of the seven supporting initiatives of the Europe 2020 Strategy and aims to establish ICT key role in achieving the objectives that Europe, in the shape of its Member States, promised to reach by 2020. Therefore, the Agenda is meant to track the way to take full advantage of ICT (especially Internet) social and economic potentials to stimulate both innovation and businesses growth.

The foundation of European Digital Agenda relies on the idea that a virtuous circle may be triggered by investing considerably more in ICT and correlated services. In accordance with this strategy, each Member State shall develop new digital contents on a European scale in order to increase and motivate domestic demand for faster and greater capacity internet connections which in turn will create new investment opportunities and job offers within the digital environment. The EDA identifies seven specific pillars against which reforms must be put in practice: (1) Digital Single Market; (2) Fast and ultrafast internet; (3) Standard and interoperability; (4) Cybersecurity; (5) R&D; (6) Digital literacy; (7) ICT services for society.

Pillar I, which is the most relevant for e-invoicing purposes, is potentially the mean by which even more contribute to the real GDP growth by improving on line access to goods and services throughout Europe. In order to properly benefit from all the advantages obtainable from the digital age, it is absolutely crucial that a single online market works correctly and cuts down all the transnational borders. Today's internet world has no borders but online markets are still segmented by too many

barriers that impede access to both services and internet in Europe and worldwide as well. First of all, this means that each firm should manage its sale activities according to a Community common set of rules. Certain aspects concerning customer's rights are not well homogenized among the European Countries, for instance in the event that the good is not in conformity with the contract or when it comes to faulty digital contents⁶, leaving the Member State free to adopt stricter measures in addition to those already amended by the European Commission. Modern and streamlined rules governing the electronic commerce would encourage more businesses to operate not just within the domestic market. Secondly, it must prevent from geographical blockage practices: it is possible that some customers are *de facto* precluded from buying certain goods and are not permitted to access to retailers' website if they are located in a different country. It is also possible that the customer being rerouted to the domestic corporate website with different prices or a different range of products offered. Thirdly, it must reduce the suffocating impact of VAT clearance practices within the domestic and the continental market and related financial burden. European companies wishing to sell across borders, face real obstacles to meet national specific VAT regulatory systems. Over the years, firstly with Directive 2006/112/CE and its subsequent amendments replacing Directive 77/388 of 17th May 1977 wherein the Commission rationalized the relevant VAT provisions, and secondly with Directive 2010/45/UE of 13th July 2010 containing amendments with regard to invoicing, a path of renovation and consolidation was begun and is still ongoing. It is worth mentioning that non-EU online orders benefit from the VAT exemption because of minor imports derogation: non-EU providers have a competitive advantage compared to those located in Europe. In order to simplify existing VAT clearance system, the European Commission within the COM (2017) 566 points out that the modernization of the existing VAT system will be based on gradual actions that will consider measures already adopted and other measures currently being examined, those principally concerning VAT regimes across Europe. In this respect, Directive

⁶ *Comunicazione della Commissione al Parlamento Europeo sulla strategia per il mercato unico digitale in Europa*, 2015.

proposal COM (2017) 569 of 4th October 2017 lays down proposal to amend Directive 2006/112/CE as regards harmonization and simplification of certain VAT rules. These proposals will be considered in detail thereafter.

Pillars II, III, IV and V represent those mechanisms allowing for a better and faster digital infrastructure. All the advantages which arise from the implementation and distribution of IC Technologies can be exploited only through interoperability increase and the joint use of different devices, services, networks, applications and databases. ICT standards improvement together with the need for greater openness, will favour innovation and creativity by citizens while not neglecting the protection and intellectual property rules adjustment. European users must feel safe when accessing to online services, but today they are quite exposed to a series of constantly evolving cyber threats. Given the ever-increasing number of internet users, the risks associated with data theft and cyber-crime become greater and more tangible. Europe has been active in promoting measures aimed at achieving higher levels of data protection in the area of digital and internet security, as the establishment of the European Net and Information Security Agency (ENISA).

Digital literacy and ICT for society pillars make up the last bricks of the European Digital Agenda framework. Internet has become a necessary condition for the everyday life considering that even the simplest daily activities, such as paying taxes or looking for maps, can be done much faster and easier going on the net. At the moment, about 15% of European families have no internet access, even if the continent has seen an exponential web browsing growth from 2007 to 2016 of about 30 percentage points⁷. The reasons for this incomplete web services coverage are mainly caused by infrastructure shortcomings in some areas and a lack of skills in the field of the digital literacy. Bridging the aforementioned gap from the digital point of view means creating the conditions so that this part of the population can also be included and therefore take part in society digitalisation, benefiting from the advantages deriving from it, and

⁷ Source Eurostat, 2017.

increasing the chances of these subjects to find an occupation.

Obviously, the Public Administration (PA hereafter) plays a fundamental role in this context, so as to act as a driving force and the reference point for all the initiatives envisaged in the document. A significant reflection moment on the themes of National and European technological progress linked to e-Government was the conference in Malmo in November 2009. This step is part of the strong modernization path within PA organizations and public service provision systems⁸. It culminated with the Malmo Declaration of 18th November 2009, thanks to which the programmatic lines have been agreed and set: (1) improve the accessibility of services provided to citizens and firms through the development of integrated systems able to provide effective and exhaustive answers to requests; (2) attention toward e-Government policies drafting engagement of all stakeholders, i.e. citizens, companies and institutions; (3) increase the use of e-Government systems to streamline the administrative machine by creating innovative, flexible and personalized services for stakeholders⁹.

The word "e-Government" shall be understood as the PA computerization process that, together with organizational changing actions, allow for managing documents and procedures using digital and ICT systems. The challenge of e-Government requires that Public Administrations equip themselves internally and to external users, according to the two following dimensions: (1) by re-engineering and simplifying internal and external processes, with a greater citizens decision making involvement; (2) exploiting new opportunities offered by the new information technologies to keep open a steady dialogue with citizens on the strength of transparency principles for a more democratic PA. That view, inherent to the Open Government, may be defined as "*a culture of governance based on innovative and sustainable public policies and practices inspired by the principles of transparency, accountability, and participation that fosters democracy and inclusive growth*" (OECD, 2017)¹⁰.

⁸ CEV General Assembly Conference "An enabling volunteering infrastructure in Europe: Situation – Trends – Outlook", Malmo, 2009.

⁹ Ministerial Declaration on eGovernment, Malmo, 2009.

¹⁰ "Government at a Glance 2017", OECD, 2017.

Remmen (2006) effectively summarized the three main dimensions of e-Government approach: (1) efficiency and cost reduction; (2) effectiveness, better quality and service greater availability; (3) participation, or consolidation of participatory democracy principle and interactive discussion¹¹. The latter help to understand how e-Government should be conceived as a set of changes, or more precisely, a set of transformations that can redefine decision making processes, provision of services and those linked to involvement and accountability.

The European action for PA digital transformation was first drafted in the eGovernment 2011-2015 plan and then revised in the 2016-2020 one. The strategy enveloped in the latter takes at its starting point the outcomes reached within the 2011-2015 period and the positive impacts the plan has contributed to create to eGovernment evolution both at European and national level¹². It helped to improve interoperability practices among the Member States, in particular the development of new technological infrastructures and digital platforms essential for ease public services access. The new action plan for increasingly digital institutions has been designed to avoid further disruptions within the renovating PA process and simultaneously remove all the existing digital barriers, which hamper the completion of a single digital market. The principles underlying all the initiatives laid down in the 2016-2020 eGovernment plan should be observed: (1) digital by default: this means that PA should offer services by means of digital channels; (2) one-off option: once citizens and firms provide fiscal information or a different kind of data, PA should no longer demand for it; (3) inclusiveness and accessibility: services have to be designed according to the multiple and several necessities of stakeholders; (4) openness and transparency: PA should permit people to have access to their data, afford them to check and monitor such administrative process which involve them; (5) cross-border in nature and interoperability: public services must be designed to operate with no troubles and additional fragmentation across the single market; (6) security: everything needs to be done in compliance with

¹¹ Remmen A., *"Images of eGovernment: Experiences from Digital North Denmark"*, in Hoff, J. (ed) (2006), *Internet, Governance and Democracy*, NIAS Press.

¹² Commission Staff Working Document accompanying the EU eGovernment Action Plan 2016 – 2020, 2015.

protection law and the new General Data Protection regulation¹³.

Bearing in mind the importance of the abovementioned principles compliance, the current action plan sets out the policy priorities aimed at speeding up the public modernization process. The following table shows the 17 points that make up the 2016-2020 eGovernment plan.

E-Government plan Actions	
<ol style="list-style-type: none"> 1. Complete digitization of procurement contracts 2. Deployment of both electronic identification and signature 3. Long term support to cross border digital service infrastructures 4. Eradication of redundant and paper-based procedures 5. Open data systems 6. Cloud computing and bankruptcy registers electronic network adoption 7. Institution of a single digital desk (EURES) through which facilitate the job search and promote individuals' working profiles interchange across Europe 8. Improvement of the e-Justice portal 9. Digital solutions for firms 10. Creation of a single VAT registration and clearance system 	<ol style="list-style-type: none"> 11. Establishment of a single electronic portal for communication in the maritime transport sector 12. Digitization of transport documents 13. Achievement of the business registers mandatory interconnection in close cooperation with the Member States 14. Support for e-Health data and services interchange across Europe 15. Accomplishment of the electronic exchange of social security information (EESSI) 16. Improvement of the European Commission web channels to encourage higher participation 17. Enforcement of the INSPIRE Directive in order to better collect citizens' information and design new territorial and environment policies.

Table 1. E-Government future planned actions

These steps represent a very important opportunity but at the same time an interesting challenge, both for Public Administrations, which must demonstrate that correctly understand the need for openness and transparency required by users, both for citizens and the industrial world, who must demonstrate knowing

¹³ *Comunicazione della Commissione al Parlamento Europeo. Piano d'azione dell'UE per l'eGovernment 2016-2020, 2016.*

how to effectively derive common value from such actions.

1.1.2. Barriers and opportunities behind the attainment of a Digital Single Market

For over two decades we have been witnessing a process of profound transformation of our society. This process takes the characteristics of irreversibility and continuity and,

in the immediate past, it marked an epochal turning point, that is the transition from the industrial society to post-industrial or advanced society. This historical event has not been self-determined, but different and concomitant propelling factors contributed to nurture it, thus generating the unstoppable and sudden evolutionary pressure we are experiencing. The most powerful factor of modernisation and changing is represented by new technologies, notably from those linked to information and communication. They have taken on an ever-increasing relevance over time, since they have changed the way people live and magnified the concept of entrepreneurship. ICTs embody important economic-industrial opportunities and they constitute a very powerful vehicle for economic recovery in the aftermath of the difficulties emerged after the worldwide global crisis.

Advanced societies express new needs and requests which call for ground-breaking and innovative answers. The pressure towards a 360 degrees change has caused, over time, the transition from primary and material needs fulfilment, typical of a consumer society, to higher character needs satisfaction, belonging to those societies in the post-consumer era. These instances call for a radical as urgent organizational change of national systems along with the measures and methods through which they relate to their users. From this point of view, both the administrative procedures and public services are at the heart of a thorough revision which will allow intercepting new standards and meeting citizens' renovated expectations.

In light of this, the opportunities that might arise from the European Digital Agenda

and the digital sphere may be condensed into the following detail: (1) first and foremost, digital processes accelerate data interchange between institutions, organizations and citizens. Any sort of data may be available and easily accessible on the net through one's own web portal. Information can be on-time notified ("*una tantum*" principle) to fiscal agencies or Government institutions without redo already done submissions. This naturally reinforces tax assessment by fiscal authorities since both taxable and not taxable operations information are made available to them. In Italy, the SDI (*Sistema di interscambio*) is the Ministerial portal used to send and receive invoices and which incorporates all the details relating to the operations occurred with the Public Administration. The Interchange System has the role of junction between the actors involved in the electronic invoicing process and hence making it less complex and operations more traceable. (2) Given that information flows faster, delivery and bureaucracy costs can then be reduced for firms and citizens. The conversion process from a paper invoicing system to an electronic one provides for a reduction of costs which result from paper and printer consuming, shipment and delivery. Other examples can be taken from the everyday life: medical prescriptions, reports and documents, notifications of product and purchase orders, on line payments. (3) All the actions the Digital Agenda provides for seek to enhance general efficiency and improve firms' competitiveness. A digitalized market, where companies' sale, purchase and administrative activities are streamlined, promotes and positively contributes to total corporate productivity. This is especially true for small and medium enterprises which find it difficult to lower costs and become more internationalized on their own. Furthermore, on line commerce, in turn strengthened further by these policies, helps to boost small and large retailer chains by making available a broader assortment of products and services to the whole market at competitive prices. It is estimated that e-commerce sales accounted for 18% of the overall sales made within Europe in 2006¹⁴. European e-commerce market never made an excellent outcome as this during 2008 and 2016 recorded period. (4) Digitalization makes manufacturers and offices more efficient as the time to market needed to perform

¹⁴ Eurostat, Digital Economy and Society Statistics, 2018.

activities drastically diminishes, thus increasing customer satisfaction and welfare. (5) Increased business opportunities provided by a faster and a more connected market, will definitively create new job positions for the existing supply and manufacturing chains in tandem with newer job digital profiles.

Even if the aforementioned benefits are very visible and concrete, several barriers has been recognized in the attainment of the single digital market and in the implementation of the eGovernment strategy. Eynon & Dutton¹⁵ gave a dedicated definition of government barriers: «*Characteristics - either real or perceived - of legal, social, technological or institutional contexts which work against developing networked governments because they: impede demand, by acting as a disincentive or obstacle for users to engage with e-government services; or impede supply, by acting as a disincentive or obstacle for public sector organizations to provide e-government services; or constrain efforts to reconfigure access to information, people and public services in ways enabled by ICTs*».

This definition brings with it the different and possible obstacle categories which can slow down the digitalization process across the European countries. Specific mention is given to legal, cultural and technical aspects which differ from one geographical area to another within Europe. In this respect, those barriers which deserve to be highlighted are the following¹⁶: (1) Financial and economic barrier has to do with the costs associated with the adoption and the implementation of new digital platforms and services needed to substitute the traditional and paper-based one. Such costs refer to those financial resources required by Governments for e-services development and budgets for installing ICT infrastructure, hardware and software. Moreover, the available funds for new digital ventures are also a function of both the success achieved and the way they were managed at early stages of development¹⁷. (2) Substandard technical architecture can cause interoperability blockages between the several digital tools and systems adopted

¹⁵ Eynon R., Dutton W.H., "Barriers to Networked Governments: Evidence from Europe", inside Prometheus Journal, Critical Studies in Innovation, Volume 25, Issue 3, 2007, pp. 225-242.

¹⁶ "Breaking barriers to eGovernment. Overcoming obstacles to improve European public services", European Commission, 2007.

¹⁷ Lam W., "Barriers to e-government integration", inside The Journal of Enterprise Information Management, Volume 18, Issue 5, 2005, pp. 511-530.

by the central Government and local administrations. That can lead to exchange information failure between authorities and citizens and to harder use and adoption of technological interfaces. A great and sound infrastructure includes the availability of a well-developed and reliable web-based network and internet connection. (3) Policy and legal barriers derive either from inadequate laws or from regulatory framework mismatch among European Government agencies. Whether they face different legislations and dissimilar local enacting rules priorities, e-services provision may turn out to be at a differing development stage with an advancement speed which varies from country to country. (4) Skill barriers and inequalities in access can limit developing e-services and hamper Government's plan to provide on-line tolls and facilities. Digital divide can be the consequence of a lack of financial resources or different socioeconomic culture among certain groups of citizens.

At a general level, the opportunities and benefits which can arise from this digital renovating process are multiple and the possibility of being wasted by legal, technical and cultural barriers is real. There are no single-bullet remedies and that's why the European Digital Agenda Strategy outlines specific measures and rules to be implemented for each pillar and objective attainment.

1.1.3. Current state of technological progress in Italy

Every year the European Commission draws up an overall valuation of progress made by the European countries in achieving the priority objectives of the European digital agenda (shown in table 1). To this end, performance indicators have been defined, which allow to evaluate the performance of each single Member State making possible a comparison between them.

SCOPE	TARGET
Broadband	basic broadband coverage for 100% of EU citizens (by 2013); broadband coverage of 30 Mbps or more for 100% of EU citizens (by 2020); 50% of home users shall adhere to subscriptions with a speed greater

	than 100 Mbps (by 2020).
Single Digital Market	50% of the population will have to make online purchases (by 2015); 20% of the population will have to make online purchases abroad (by 2015); 33% of SMEs will have to make online sales and purchases (by 2015); the difference between roaming charges and national fares will have to be removed (by 2015).
E-inclusion	Internet regular use should cover 75% of population (by 2015); reduction of people who have never used the Internet, bringing them to 15% of the population (by 2015).
ICT public services	use of eGovernment by 50% of the population, over half of which will have to be able to return completed e-forms (by 2015); make all cross-border public services available online (by 2015).
Research and innovation	double public investment in research and development for ICT (by 2020).
Low-carbon economy	reduce overall energy consumption for lighting by 20% (by 2020).

Table 2: European Digital Agenda goals¹⁸

The Commission has also established the Digital Economy and Society Index (DESI) useful for measuring and evaluating for each country, in a homogeneous way, the diffusion and level of connectivity, digital skills, services digital services offered, use and activities carried out on the internet by citizens and companies. The index is structured on over 30 indicators divided into 5 main dimensions of digital intervention that affect the overall economy: (1) *Connectivity*: measures the development and quality of bandwidth infrastructures; (2) *Human Capital*: evaluates the work force and population's digital skills; (3) *Use of Internet (citizens)*: measures the use of online services performed by citizens (from reading news to banking practices to shopping); (4) *Integration of Digital Technology (companies)*: quantifies the level of digitization of businesses and their ability to exploit the channels of online sales (electronic invoicing, e-commerce, etc.); (5) *Digital Public Services*: assess the degree of digitization of public services, particularly of eGovernment and eHealth. The Digital Economy and Society Index is designed in

¹⁸ European Commission, 2010.

such a way as to evaluate not only the single indicator but also the interconnection between indicators and dimensions; a weight system has been created to this end. In 2017, according to the DESI, Italy ranks 25th among the EU members, only prior to Greece, Bulgaria, Poland and Croatia. There are some states, especially the Scandinavian ones, which having a more digital orientation since before the advent of the Agenda, they have already achieved some goals. For others, including Italy, the digital gap to bridge is extremely significant. According to the European Commission, Italy with a total score of 0.42 is part of the group of countries that are catching up, and that is, those whose score, despite being below the EU average, increases faster than the EU as a whole (the 2016 DESI for Italy was 0.38)¹⁹. Looking further into the five components of the index, it can be seen that the dimension in which Italy does better is that of digital public services: the rank rises to 21 and the value of the index is near to the European average, followed by the integration of digital technologies by companies (rank 19 and DESI 0.33 similar to the average for countries in recovery and slightly below the European average at about 0.37). This last dimension, together with that of internet use by citizens, where Italian people are the last in the ranking, pays the price for low levels of digital skills. The human capital dimension, in fact, although it represents the area in which Italy has achieved the greatest progress (compared to 2015), still shows unsatisfactory levels. According to the European Commission research, 67% of Italian citizens frequently use online services as compared to 79% on average in Europe. In terms of connectivity, Italy has improved its position and it is reducing the gap with the European average score doing worse within the NGA (next generation access) coverage and fast broadband subscriptions fields, ranking twenty-third and twenty-fifth respectively. Therefore, the conclusion which can be taken from the DESI statistics are that the situation concerning the digital principles understanding and technological tools adoption is steadily improving, although the European framework current state, particularly the Italian one, seems to be challenging and difficult to manage: local

¹⁹ Commission Staff Working Document “*Europe’s Digital Progress Report 2017*”, European Commission, 2017.

authorities together with public administrations will have to support and contribute to this renewal path.

1.2. E-invoice deployment across the European Union

The electronic management of document flows exchanged between private organizations and public administrations within Europe is a central aspect in the changing digital process initiated by the European institutions. Following the entry into force of the Directives on electronic invoicing (see below) during the last two decades, the intent of the Commission appears to be to ensure the transition from paper to digital VAT documents and to the complete archives dematerialisation, now only required for public administrations and public procurement. This change will take on a further strategic value when it might be fully applied to the whole private sector, thus involving all the economic operations, supply of goods and services made throughout the European soil.

According to Billentis, a consulting firm specialized in e-billing researches and solutions, there are about 400 billion invoices exchanged each year between companies (B2B) and between companies and public administrations (B2G) worldwide²⁰. Within the European context, total invoices traded are estimated to be about 36 billion in 2016²¹. EESPA (European E-invoicing Service Providers Association) found that only 5% of these is processed by electronic means. Even if the portion of e-invoices is very little compared to the full number of invoices transacted, it is worth noting that the Association reported a significant growth over the 2014-2016 period of about 34,9% in B2B and B2G deals²². It can therefore be noted that issuing and retaining invoices on paper format constitutes a significant sector to be renewed because of excessive costs accruing from “paper management” and the ever-increasing claim for physical space availability needed for archiving.

²⁰ Koch B., “E-Invoicing / E-billing 2017. Significant market transition lies ahead”, Billentis, 2017.

²¹ Source: the European Central Bank.

²² Available at: <https://eespa.eu/eespa-aggregated-2016-volume-survey/>

1.2.1. Changes in the European rules

Managing administrative and accounting procedures for tax purposes of VAT registered legal entities is a task which requires laws never-ending updating process. Over the past decade, the current prevailing trend in bureaucratic-administrative procedures digitization has been reinforced by the European rules concerning fiscal documents provision and transmission. The European Commission, with the Directive 2001/115/CE, has introduced the possibility for taxpayers to issue and submit invoices electronically by agreement between the parties. The Directive in question amended Directive 77/388/CEE, which was confined to regulate paper invoices, and provided for e-invoice option to the extent that the authenticity of the origin and the integrity of contents are guaranteed over time via an encryption and electronic signature or using the electronic data transmission system with the prior agreement of the Member State concerned. It stated that the authenticity of the origin of the invoices and the integrity of their contents, as well as their readability, had to be guaranteed throughout the archiving period. Especially for the electronic invoices, it dictated that the data which they contained could not be changed and had to be kept readable during this period. After five years, the Directive 2006/112 that has been in force since 1.01.2007, laying down the conditions and the rules concerning VAT to ensure the proper functioning of the European internal market, addressed again the theme of electronic billing. The Directive 2001/115/EC was incorporated into the latter in which a definition of electronic invoicing is given (Article 217), electronic transmission regulated (articles from 232 to 237), indicating the specific obligations related to archiving invoices (articles 244 to 248) and regulating the right to have access to invoices stored electronically in another Member State (article 249). Pursuant to the article 218 of the Directive, it was hereby established an equal treatment between invoices on paper and in electronic form. The present legislative text clarifies within article 217 what is meant by electronic billing: «...an invoice that contains the information required in this Directive, and which has been issued

and received in any electronic format»²³. The European Council moved further by promoting and adopting Directive 2010/45²⁴ which amended, with regard to the billing rules, the directive 2006/112/CE, dictating a series of indications and simplification measures concerning issuing, managing and preserving methods of the electronic document. The Council Directive 2010/45/EU was issued with the aim of achieving more simplification of the rules on invoicing, also establishing the equal treatment of paper and electronic invoices: in fact, the latter can be applied the same procedures as for paper invoices, without administrative burdens and costs increasing compared to those on paper form. In this regard, the legislative measure had in fact amended the definition of electronic invoice pursuant to art. 217 of Directive 2006/112/EC: while the notion previously used was focused on the "transmission or electronically provision" of information to be billed, the new one refers to the issue or reception of the invoice document in electronic format. It was the intention of the Directive to distinguish even more clearly the concept of e-invoicing from the notion of digital or telematic document. According to the latter, it seems that not all invoices generated in electronic form can be included within the definition set out by article 217. Those created in electronic format using an accounting software or a word processing software and then sent and received on a paper form may not meet the definition of Directive 2010/45/EU compared to those created previously in paper format, then scanned, signed with electronic signature (based on a qualified certificate using a device to create a secure signature) and then sent or received by e-mail which can instead be considered electronic invoices. Looking at these two hypotheses, the invoice original format, either electronic or paper-based, is not relevant, but rather the fact that the invoice is in electronic format when it is issued, made available and received. In this respect, the Italian Tax Revenue Agency within the Circular n. 18/2014 clarifies that it's just the method of sending, which must be in electronic format to the time of transmission, reception and acceptance which shall identify electronic invoices from paper ones. The Agency also states that the invoice issued by means of

²³ Article n.217 of the Council Directive 2006/112/EC has been amended by Council Directive 2010/45 of 13 July 2010.

²⁴ Entered into force on 1st January 2013.

accounting or word processing software is not considered "electronic" whether sent and received on paper form. On the other hand, an electronic bill is considered to be an invoice issued on paper, then transformed into an electronic document, sent and received via electronic channels (for example electronic mail), on the condition that the legal requirements are respected (authenticity of origin, integrity of the content and readability). The present Directive clarifies the arrangements for e-invoices transmission and storage with a view to ensuring the authenticity of the origin, the integrity of the content and the legibility of the document throughout the conservation period²⁵. With particular reference to electronic invoicing, the law prescribes that the acceptance by the recipient is a necessary condition amending the formulation of Article 232 of Directive 2006/112/EC. The requirement of acceptance by the recipient highlights the asymmetry between the issuer and the addressee of the invoice; in fact, the decision of the seller to invoice electronically does not bind the buyer, but the latter autonomously decides whether or not to accept the IT document.

The last recent European act towards e-invoice procedure standardization was the adoption of Directive 2014/55/EU on electronic invoicing in public procurement, published on 6 May 2014 in the Official Journal of the European Union. This new Directive marked a crucial step towards the 'widespread' use of electronic invoicing systems throughout the Union, not just in the field of public procurement but even among commercial relations between private operators. The Directive 2014/55/EU is one of the initiatives promoted by the Union for the diffusion of e-procurement and it was aimed at strengthening the EU digital policies in place (the so-called Digital Agenda for Europe) for 'a paperless public administration'. The adoption of the Directive also responds to the indications of the Commission, which in the Communication "Reaping the benefits of electronic invoicing for Europe" (COM/2010/712) had invited States to adopt e-invoicing as the main way of invoicing within European Member States by 2020. There are two key aspects which need particular attention of this Directive before going further in the reading of the

²⁵ Article No.1, subparagraph 22, Council Directive 2010/45/EU.

present thesis. The first resides in Article 7, under which Member States «*shall ensure that contracting authorities and contracting entities receive and process electronic invoices which comply with the European standard on electronic invoicing*». The choice made by the European Legislator does not impose an exclusive obligation to use electronic invoices but requires contracting authorities to accept, from a given date, electronic invoices that comply with the instructions dictated by the same Directive. In other words, it is intended to ensure that the EU procuring entities are fully equipped to receive and process electronic invoices that meet legal requirements. That is made clear on the front pages, where it is said that the Directive «*should only require recipients of an invoice, i.e. contracting authorities, central purchasing bodies and contracting entities, to accept and process electronic invoices. This Directive should be without prejudice to the right of the sender of the invoice to choose between submitting the invoice in accordance with the European standard on electronic invoicing, in accordance with national or other technical standards, or in paper format*»²⁶. Thus, the Directive does not oblige the use of electronic invoicing and lays the choice to the discretion of the Member States. It should also be noted that the mere communication of an invoice electronically (e.g. sending a scanned invoice) does not constitute an "electronic invoice" pursuant to this Directive. The clarification is made explicit reading the second page of the document where it is clarified that «*only machine-readable invoices which can be processed automatically and digitally by the recipient should be considered to be compliant with the European standard on electronic invoicing. A mere image file should not be considered to be an electronic invoice for the purpose of this Directive*»²⁷.

The other element characterizing the Directive 2014/55/EU concerns the development of a common European standard on electronic invoicing. Thanks to this regulatory action, the essential content the e-invoice shall include must be defined, thus allowing for invoices sending and receiving between systems build on different technical standards. European Legislator's choice has its origin in the

²⁶ Recital n.35, Council Directive 2010/45/EU.

²⁷ Recital n.7, Council Directive 2010/45/EU.

recognition of the existence within the Member States of different electronic invoicing systems, based on different technical solutions and standards which bring to non-interoperability. And hence the risk that, in the absence of common rules, such discrepancies could escalate because of the ever-increasing booming and use of electronic invoicing systems. For this purpose, the European Commission with the Implementing Decision 2017/1870 has settled the e-invoice standard format mandated by Directive 2014/55, article 11 of which required an eighteen months transposition period from the publication in the Official Journal of the present Implementing Decision, published on 17 October 2017. Therefore, this means that public administrations will only be able to receive electronic invoices issued on the basis of new European standard EN 16931-1: 2017 starting from 18 April 2019.

It's worth highlighting that the European invoicing plan within public administrations, accomplished with the present Directive, is just one aspect of that, called PEPPOL, thought for the public administrative processes as a whole. PEPPOL (Pan-European Public e-Procurement Online)²⁸ is a large-scale project launched by the European Commission and eleven European governments to harmonize and encourage the use of e-Procurement throughout public and private sectors, particularly for small and medium-sized firms. PEPPOL supports efficient process implementation for e-procurement by adopting and sharing common best practices and thanks to a platform which allows for the exchange of electronic documents in Europe. This platform is destined to become the main European network for the exchange of documents related to e-Procurement that allows companies to participate in public tenders. For example, a German company can participate in a French public tender with PEPPOL. This platform facilitates the exchange of orders, invoices and catalogues between buyers and suppliers across different member states. Its components include the classification of goods and services and corporate documents necessary for public tenders. PEPPOL would represent another important milestone in terms of interoperability and standardization, as is being done for billing.

The objective pursued by the European Commission with this ruling activity is that

²⁸ For information see: <https://peppol.eu/>

of reduce the complexity and legal uncertainty concerning the interpretation of the invoice content, thus allowing cross-border interoperability for public administrations, for intermediaries and the whole sector of private economic operators, overcoming the limits of national formats.

1.2.2. Strategic and policy lines surrounding dematerialization and e-invoicing

The European Commission wants electronic invoicing to become the main billing mode in Europe by 2020. The promotion to a mass transition to e-invoice is encouraged by the many advantages this transformation carries with it. The move to a digitalized billing process is estimated that could bring to about EUR 226 billion in administrative cost reduction over a six years span. The processing cost per unit of paper invoice is calculated between EUR 1.13 and EUR 1.65 at present: it is expected to scale down these values drastically per invoice between EUR 0.18 and EUR 1.18 by means of the electronic way to process and collect VAT documents²⁹. Switching from the paper to the digital format, the advantages won't touch only public offices or private firms, reporting more efficient processes, but they would also positively affect consumers and citizens as a whole, especially for the convenience to receive documents via internet in terms of time and costs. Anyway, it is desirable to ensure the possibility to request paper-based formats by customers who have limited internet access and few technological skills³⁰.

The rationale behind electronic invoicing migration encouragement could be addressed looking further into each subobjective that underpin the European agenda: (1) the digitalization of administrative processes gives birth to significant manufacturing, material, social and transport cost reductions. Notably, a successful integration of provisioning, billing and payments processes together with those

²⁹ SEPA potential benefits at stake, Capgemini.

Available at: <https://www.pdfFiller.com/100055298-fillable-capgemini-sepa-potential-benefits-at-stake-form-ec-europa>

³⁰ With the B2C mandatory electronic invoicing adoption from the 1 January 2019 in Italy, every final consumer might also require a paper copy of the invoice or find it in its dedicated reserved area of the Revenue Agency website.

concerning production and sales, constitutes the engine for business cost savings. The whole process can be almost entirely automated: the information contained in the electronic invoice can be created semi-automatically from the supplier's computer and sent to customers, whose computers can automatically check information and whether is correct, they proceed with payment approval. In Italy, the public administrations and Governmental institutions must receive and approve electronic invoices, attesting any supply of goods and services, before making any payments. The electronic invoice is considered legal transmitted and received by the Public Administration only in return for issuing the delivery note³¹. When the time-limit of fifteen days has been overrun since the first delivery attempt (receipt of delivery or notification of non-delivery), a notification by the SDI ("Sistema di Interscambio") has the function of giving notice to the transmitter and to the recipient that the invoice processing timeframe must be considered closed and therefore the lender has the possibility to start, after the due date of payment, the procedures provided for credit repayment.

The implementation and the adoption of the electronic invoicing involves staff employed in different business functions and it represents an excellent exercise aimed at revising in-house business process dynamics. It can be a factor which drives the path towards both innovative solutions and development of new optimization and rationalization ideas. Even in the case of small companies in which these functions are performed by fewer people, the value deriving from the automation of the processes can achieve similar results. (2) Another key advantage of e-invoicing in small and medium-sized businesses is the creation of a greater competitive advantage and the opportunity to access a wider market of potential customers and suppliers who prefer to work with partners who have made business processes more efficient and transparent. Any opportunity to improve and expand business relationships in the current economic context is extremely valuable and, therefore, to be continued. Specifically, it has been verified that digital technologies

³¹ Article 2, subparagraph 4, Italian Inter-Ministerial Decree n. 55/2013 states that: «*La fattura elettronica si considera trasmessa per via elettronica, ai sensi dell'articolo 21, comma 1, del decreto del Presidente della Repubblica 26 ottobre 1972, n. 633, e ricevuta dalle amministrazioni di cui all'articolo 1, comma 2, solo a fronte del rilascio della ricevuta di consegna, di cui al paragrafo 4 del documento che costituisce l'allegato B del presente regolamento, da parte del Sistema di interscambio*».

can improve the knowledge of foreign competitors and reduce the perception of risks associated with entering new and different markets from both a cultural and geographical point of view³². On this issue, greater competitiveness could bring to increased internationalisation: so, the latter has a very close connection with the concept of process digitalization. These subjects account for two of the themes most studied among economic and business researches over the last decades. Their relevance for the companies' competitiveness and the entire economic system is such that the two issues aforementioned have started to be treated jointly, in order to understand the relationship between the two. Drawing on the literature, the theories which deal with their close relationship could be summed up into the followings: (a) Those who consider internationalization an influential factor for increasing digitization. The effects of internationalization on the adoption of digital technologies can be explained by the resource based view theory, in the sense that companies operating in foreign markets need some types of resources and skills that technologies can help to develop, so that internationalized companies would have a greater incentive to adopt such technologies³³. (b) Those who consider digitization an influential factor on the international performance of companies, focusing on the benefits that Internet and digital process adoption can provide for exports development and in penetrating foreign markets. The studies agree on the positive influence of digitalization on the export performance of companies: digitalization is seen as a facilitator, or as an enabler of internationalization or as a driver of new international opportunities³⁴. Cassetta et al. (2016) verified on a sample of Italian manufacturing companies that there is a positive relationship between the adoption and use of digital technologies and the presence on foreign markets, especially with reference to Internet sales and communication technologies.

Invoicing allows SMEs to grow their businesses, in terms of orders, customers and

³² Mathews S., Healy M., "The internet and information capability reduce perceived risk of internationalization: an Australian SME perspective", *International Journal of Organisational Behaviour*, Volume 12(1), 2007, pp. 71-87.

³³ Zu K., Kraemer K.L., "Post-Adoption Variations in Usage and Value of E-Business by Organizations: Cross-Country Evidence from the Retail Industry", *Information Systems Research*, Vol. 16, No. 1, 2005, pp. 61-84.

³⁴ Neubert M., "The Impact of Digitalization on the Speed of Internationalization of Lean Global Startups", *Technology Innovation Management Review*, Vol.8, No.5, 2018.

suppliers, without having to invest in a proportional number of employees who perform repetitive administrative tasks. (3) Another benefit is the least impact of the organization behaviour on the environment, a theme too often underestimated looking at greater environmental sustainability worldwide. Digitalization and electronic billing play a significant role in saving the environment and in slowing down carbon emission. Those savings have to be valued considering all the direct inefficiencies paper-based processes can create along with those ICT shall remove by itself acting as an enabler of sustainable and environmentally actions. Drawing from Penttinen's study, electronic invoicing can reduce the environmental carbon impact by 63% in comparison with paper invoicing³⁵. Another research³⁶ shows that the 1.2 million tons of paper a year consumed within Italian offices amounts to about 20 million trees felling and produce in the atmosphere a CO₂ quantity equal to over 4 million tons per year. The same study reveals that if one sheet every five is saved, there would be 900,000 tons of CO₂ less each year, equal to 550,000 moving cars less covering 10,000 km each for one year. (4) The EU strategy, concerning the mandatory adoption of electronic billing, is walking on a twin track and it aims at (a) reinforcing the process of homogenization concerning the VAT regulatory framework, which includes the ways every economic operation is billed. According to its legislative history, this tax started to be in the European eye with the two directives n. 67/227/EEC and n. 67/228/EEC³⁷ which date back to the 11 April 1967, with the stated aim of harmonizing the indirect taxation within the Member States and particularly their legislation concerning consumption taxes. Thus, it comes as an indispensable tool for the realization of a common market which should, at least in principle, come up with similar characteristics to those of national ones. For this reason, it could not be admitted in no way the existence of different tax systems that would alter the competition and hinder the realization of

³⁵ Penttinen E., "Assessing the carbon footprint of paper vs. electronic invoicing", 21st Australasian Conference on Information Systems, 1-3 Dec 2010, Brisbane.

³⁶ *Documento digitale per salvare sei milioni di alberi*, Comunicato stampa del Consiglio Nazionale delle Ricerche (CNR), 13 dicembre 2007.

³⁷ Introducing the «*harmonisation of legislation of Member States concerning turnover taxes*» and its «*structure and procedures for application of the common system of value added tax*». Instead, the III, the IV and the V Directive - respectively directive 9 December 1969 n. 69/463 / EEC, directive 20 December 1971 n. 71/401 / EEC and directive 4 July 1972 n. 72/250 / EEC - they simply postpone the date of entry into force of the common tax system.

the free movement of goods and services within the community area, with the aim of achieving the objective of a wider 'competitive neutrality' within the single euro market³⁸. Around the VAT tax system, the European Commission has come to build one of its main bets, since this tax is possible to view as one of the cornerstone of European tax law as well as a central tax for individual member countries' fiscal regimes.

Nowadays, the legal structure concerning the VAT discipline has changed considerably with the entry into force of the Directive 2006/112/EC, which laid down the groundwork for the implementation of common rules. (b) improving VAT compliance among the European Member states, the transparency of business transactions and mitigating VAT compliance costs. Both European and Italian Legislators have set themselves the goal of encouraging the spread of electronic invoices between private individuals, with the aim of continuing the process of modernizing the system and, as an immediate positive fallout, favouring tax compliance. Tax evasion is explained by four major economic determinants: the effectiveness and efficiency of controls and sanctions, the civic-economic sense, correlated with the perception of the quantity and quality of public services, the ease of fulfilling the tax obligations and the absolute size of the tax claim. The Allingham and Sandmo's model is a good illustration of this phenomenon: they assume that people's fiscal behaviour is influenced by factors such as the amount of tax rates (which determine the benefit of evasion), sanctions and the likelihood of being detected (which determine costs)³⁹. So, it's seems that both the probability of being discovered together with the severity of penalties, could impact on how tax payers decide to evade: whether the tax assessment is effective and imposed sanctions are significantly elevated, people will be deterred from being evaders. Kinsey (1984) in his article argues that sanctions are less effective in diminishing evasion than the probability of being discovered; this concept can often be found

³⁸ Manzoni I., *"L'imposta sul valore aggiunto. Le deviazioni dalla neutralità nel modello italiano"*, Giappichelli Editore, 1973, pp. 55-57.

³⁹ Allingham M.G., Sandmo A., *"Income Tax Evasion: a theoretical analysis"*, Journal of Public Economics 1, 1972, pp. 323-338., North-Holland Publishing Company.

in the literature on tax compliance⁴⁰. According to Kinsey's study⁴¹, the higher the probability of being assessed, the more the behaviour of individuals is influenced and tax rules are complied with. Thus, the electronic invoicing is seen as a vehicle to improve fiscal controlling activity operation, increasing the possibility to find out VAT evaders and discover fictitious and non-existent transactions.

In the light of tax compliance costs shortening, simplification of laws plays a key role: in fact, the implementation of the hypothesised electronic invoicing scenario could create the conditions for the elimination of some obstacles, currently in force, for the recovery of the VAT credit, the obligations connected with the presentation of VAT compliance statement and the countless VAT compulsory notifications, such as the so called "Spesometro" or VAT quarterly reporting within the Italian national regulatory framework⁴². It's also true that all the costs incurred in complying fully with legal requirements are not just attributable to the administrative formalities, but also with tax practitioner's fees, the time consumed by taxpayers as well as incidental expenses including software packages. In line with this thinking, Sandford, Godwin and Hardwick (1989) provide a broad definition of tax compliance expenses, as those costs «*incurred by taxpayers and third parties in meeting the requirements laid upon them in complying with a given structure and level of tax*»⁴³. With this in mind, the European Commission has identified, regulated and simplified over time the electronic invoice framework in order to reduce such operating and compliance costs and administrative burdens for users, ensuring the availability of a tool to combat tax evasion and to fight fraud, especially in the form of "carousel frauds".

On 28 October 2014, the OECD approved and published the report "Tax compliance by Design - Achieving improved SME tax compliance by adopting a system perspective"⁴⁴ wherein it is examined the evolution of the tax administration

⁴⁰ Mason and Calvin (1978) argue that the highest correlation with the confession of having evaded, results from the perception of the probability of not being discovered.

⁴¹ Kinsey K.A., "Survey Data on Tax Compliance: A Compendium and Review", American Bar Foundation Tax Compliance Working Paper No. 84-1, 1984.

⁴² Article 4 of Italian Decree-Law No. 193/2016 concerning measures for the evasion recovery.

⁴³ Sandford C., Godwin M. and Hardwick P., "Administrative and compliance costs of taxation", UK Fiscal Publications: Bath, 1989, p. 10.

⁴⁴ Available at: <http://www.oecd.org/tax/administration/tax-compliance-by-design-9789264223219-en.htm>

strategies of different countries and it is highlighted how the role of the latter is shifting from that of a mere passive receiver of tax declarations, which are subjected to *ex post* controlling activities, to that of tax compliance enabler through real-time information acquisition and processing, concerning commercial transactions and related payments made by companies to each other and to final consumers. This would mean that Governments and fiscal authorities shall adopt an end to end perspective, i.e. a holistic view enclosing taxpayers and tax administrations pre-award and post-award process phases. The idea behind this approach is to ensure that tax authorities are able to capture as much transactions data as possible in order to determine the tax amount to be paid with little information provision by taxpayers. The role of the tax administrations should therefore be to independently manage the whole process, hence relevant fiscal information processing and transformation activities. Moving towards a more complete and full-scale payments and operations digital information supply chain management and an increased collaboration between authorities and SMEs, business processes can be improved, significant savings in tax compliance costs and a more effective policies fighting tax evasion could be achieved.

1.2.3. E-invoicing maturity throughout EU Member States

The electronic invoice phenomenon is internationally widespread, although each country shows its own and specific degree of development, particularly in relation to the initiatives carried forward by each government. As evidenced by a research commissioned by the CBI Consortium in cooperation with Celent research and advisory company, the United States and some countries in the Asian continent (China, Hong Kong, Taiwan, India, Japan, South Korea) became protagonists of both economic recovery initiatives and projects linked to the creation of new forms of process efficiency and operational effectiveness within the administrative and office management sectors as early as 2010⁴⁵. This is specifically noticeable in Asia,

⁴⁵ Available at: <https://www.cbi-org.eu/Engine/RAServePG.php/P/280210010301>

where “paperless trade” is more popular and more appreciated than e-invoicing alone. Fiscal regulations represent an obstacle to the full deployment of initiatives for its widespread deployment, as well as the low level of knowledge of the benefits associated with electronic processing of invoices, even in those Asian economically advanced countries, as in China and Japan. In Asian countries, much more attention is focused on investment in “paperless trade”, which means in practice the dematerialization of accompanying bills (waybills), bills of lading and customs documents. The order-payment cycle streamlining is closely linked to the level of sensitivity acquired by companies pursuant to the level of banking services offer (payments) and trade information processing (goods exchange, therefore, invoicing) country expansion degree. According to Billentis Report (2017), only few Asian countries have already adopted e-invoicing within B2B operations and in the B2G segment, seen as the leaders in that Region: Singapore, South Korea, Taiwan and Hong Kong. At present, electronic billing is not so common in the east end of the world. Anyway, an increasing number of exchanging information and messages are at the centre of the digital modernization and dematerialization process throughout the latter: Australia is introducing the digital exchange of medical prescriptions and related messages in the healthcare industry meanwhile PDF invoices are already traded in some countries as in South Korea and Singapore. China has introduced an online electronic invoicing system whereby firms and taxpayers can generate and issue an invoice but it isn’t mandatory yet. The development of electronic invoices in Russia is remarkable, particularly in the retail, pharmaceutical and automotive industries but there is no obligation. The use of electronic invoices in this country is optional and depends on the agreements between the sender and the recipient.

As regards to US government, it is not proactive as it should in promoting the use of electronic invoicing in a uniform and consistent manner with the standards in use and leaves the initiative to self-regulation (for example, the Department of Defense has created a portal for purchases using proprietary technologies). The rules and methods of communication have not been defined at an official standard level, although XML standard is properly used. Transmission channels alternatives are many (just think that there are 180 e-invoicing network operators in place), but

also in this case they are proprietary channels, which highlights, once again, the private nature of electronic invoicing initiatives in the US. The adoption of the electronic billing is mainly headed by large companies seeking to automate their processes of the order-shipment and shipment-delivery cycles as well as computerize their financial supply chain and payments in order to gain efficiency benefits.

Unlike the latter, and despite the problematic issues of its social and economic systems, the most advanced region of the planet, with regards to the use of the electronic billing, is Latin America, where this tool is aimed at improving fiscal control and mitigating the high evasion rates which characterises the region. E-invoicing hasn't a mass dissemination on its own because other electronic accounting procedures are being developed based on a single management platform shared by companies: the electronic system allows the state to know real time operations carried out by operators. Thus, new pioneering accounting procedures are being developed, supported by the rigorous exploitation of the electronic document. Brazil has made it compulsory for all business since 2014 and it turned out to be the country with the highest adoption rate globally within business to business and business to government industries⁴⁶.

The analysis of the e-invoice phenomenon within the EU should be based on a totally different consideration, compared to other areas of the planet, mainly because VAT is a tax shared by the 28 Member States, but also because national sovereignty in this sector of imposition is somewhat limited by the directives regulating the matter. The level of adoption of the electronic invoice within EU countries follows a heterogeneous criterion, not generally attributable to standard factors such as the regulatory framework. Furthermore, it should not be neglected that the level of penetration of electronic invoices in Europe varies from country to country for B2B and B2G transactions. It is known that the electronic billing is regulated, within the Union regulatory framework, on an absolutely optional basis and the only area in which a clear Community discipline operates is that of public procurement, as seen in the previous paragraphs. The European e-invoicing

⁴⁶ Koch B., "E-invoicing/ E-billing: significant market transition lies ahead", Billentis, 2017.

landscape has seen several development phases which equally applies to the whole legislative history that tells how Europe actually came to be what is today: (1) Even in these times, country-specific rules characterise the legal framework of each Member State. This was more pronounced in the early stages of the European Union establishment, since each country had its own legal system. Thus, there was an isolated approach through which some private service providers started to propose and come up with solutions for e-billing in an independent way. (2) Once the benefits and advantages of using digital and electronic systems for administrative purposes began to be there for all to see, some national governments within Nordic countries launched the initiative to make e-invoicing mandatory ensuring its presence in the political agenda. (3) With the advent and the amendment of the Europe's plans and strategies for digitalization and EU wide partial harmonisation, e-invoicing became a key issue in the draft aimed at establishing a digital single market. (4) Over the last years, with the amendment of several Directives⁴⁷, the European Union has harmonised e-invoicing rules and standards⁴⁸ for the public sector. Nonetheless, the B2B and B2C invoicing adoption remains at the discretion of each Member State.

Nowadays, the European countries which has already approved and implemented e-invoicing within governments and VAT taxpayers relations (B2G) are Denmark, Austria, Finland, Estonia, Croatia, Lithuania, Sweden, Spain and Slovenia. On the other side, those that are gradually introducing this new electronic and digital system as of 2017 are France, Germany, Netherlands and Czech Republic⁴⁹. Portugal is the only EU state that can be considered up the road as compared to Italy and the others in the billing process digitalization given that e-invoice is required for each economic operation since 24 August 2012.

⁴⁷ Directive 2014/55/EU entrusts each member state to implement and adopt business to government invoicing and forces public administrations to accept electronic invoicing within public procurement.

⁴⁸ The European Commission with the Implementing Decision (EU) 2017/1870 «on the publication of the reference of the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council» has established the invoice standard format.

⁴⁹ Source: CEF Digital – Connecting Europe.

Conclusions and final thoughts

The picture that emerged in this chapter is that of a period of strong change in the structure of Public Administrations and in those concerning the administration and the billing of economic operations. The European Public Authorities together with their fiscal agencies are starting to pay more and more attention outside their borders, under the pressure of the Italian and European provisions and regulations, and as a result of the demands and needs of users who expect an always better and competitive service. ICT tools deployment is bringing with it a strong awareness of the political interest towards the construction of new digital skills and their use for performance improvement within the private and the public sector. This transformation process described in this chapter, starts with the regulatory reforms implemented in the last decade that have given rise to the phenomenon of e-government and to the establishment of a single digital market, which encompasses the emergence of new paradigms for the provision of digital services and a better dialogue with citizens, enabled by the use of ICT tools. Despite the increased awareness in this field, the investments and the efforts for a stronger collaboration, the achievement of significantly positive results continues to represent a complex and a difficult challenge for all countries at present. To achieve efficiency and effectiveness objectives, governments are introducing innovations in their organizational structure, renewing their capacities and the way they use and develop their human, technological and financial capital. In this transformation process, the use of the latest ICT techniques plays a crucial role in enabling the creation of an innovative and a more digital both legal and fiscal public system. The electronic invoicing is one part of this whole digital modernisation. It is an important tool through which companies can reinterpret its strategic values and reinvest its resources to the integration and improvement of the logistic, commercial and accounting processes into more efficient activities. The need for greater integration between the supply chain and the financial one gets therefore the answer with the electronic invoice, which becomes an indispensable tool to support the complete procedures streamlining, which includes payment services

and financing, ensuring an excellent degree of alignment between the various business processes.

Paper to digital transformation process seems to be more pronounced in the areas of the planet suffering from a poor social and economic development, which could arise from the high evasion and tax avoidance rate. The countries in which the electronic billing has been made compulsory, are those showing high volumes of not cleared VAT. Digital procedures aimed at reporting and paying the consumption tax to fiscal agencies are more effective to detect abnormal operations and fight against VAT frauds.

As a result of all of this, it seems that e-invoicing, and dematerialisation in general, doesn't know any drawbacks or downside risks. Every change inevitably leads to a structural reorganization and rearrangement of some market models, modifying their working ways and their necessary inputs. Particularly linked with the digital transformation, it's the possible negative impact which can occur on the employment rate. Digitalized growing processes will surely require ever increasingly computer and technological skills instead of those needed for performing manual activities, such as invoices recording. Hence, the importance of assessing all the potential implications a well-conceived policy could give birth.

Documents dematerialization, which will be the theme that will be explored in the continuation of the present thesis, on the one hand facilitate an evolving path aimed at achieving the desired levels of efficiency and effectiveness, and make competences obsolete much faster on the other.

Chapter 2

The electronic invoicing discipline in Italy

Since the introduction of value added tax, which took place in Italy by the Presidential Decree 633/1972, Italian institutions were aware of the need to adopt the necessary mechanisms so that each subject liable for the tax provided for the payment of the amount due at the agreed time. Digital submission of some data or lists in electronic format for VAT purposes was required from that moment on; taxpayers have started to use specific software platforms needed to submit data with previously unknown features and structures. The introduction of the electronic invoice⁵⁰, is also part of the changing and modernization process of the tax system as a whole.

Law No 23 of 11 March 2014 has delegated the Italian Government to issue the implementing decrees for overhauling the tax system legislation, in compliance with the general principles expressed by the Delegation. Claims for that revisioning process covered fundamental topics, such as the land registry reform, deductions of expenses when determining the tax burden, the simplification of accounting and declarative obligations, not least as regards tax credit and debt procedures offsetting. Following the entry into force of the law under discussion, the Italian Government had to adopt legislative decrees towards a more equitable, transparent and growth-oriented tax system. Implementing decrees had to include reforms concerning the coordination and simplification of the disciplines of tax payers' accounting and declarative obligations, in order to facilitate communication with the financial administration in a framework of mutual cooperation. Specifically, the Italian Government was responsible for the implementation of rules aimed at strengthening and rationalizing payment traceability systems, by explicitly providing for payment methods subject to traceability and by promoting appropriate forms of coordination with foreign

⁵⁰ Article No. 21(1) of Presidential Decree 633/72 amended by Legislative Decree 119/2018 defines the electronic invoice the one which has been issued and received in any electronic format.

countries, and encouraging the use of electronic invoicing and the receipts telematic transmission⁵¹. The electronic billing is seen as a mechanism suitable for fighting against VAT evasion, the tax due on intermediate goods and services, making particular use of the reverse charge scheme. This is a time of change that will require companies and the accountancy profession to make a considerable effort, which will mainly consist in changing accounting procedures, mentalities and adopting adequate technological infrastructures and systems. In this process of change, the Italian Fiscal Agency stands in front since it places at the disposal of firms and taxpayers an e-invoicing software solution for free, which offers the possibility to create, issue to the SDI ("Sistema di Interscambio") and digitally store all the emitted and received invoices. Simultaneously, other actors moved to bring about technological solutions in the interests of ease and assist taxpayers within the e-invoicing documents flow like the Italian Chamber of Commerce, which has developed a free e-invoicing service for B2G operations that has been made available to small and medium-sized enterprises, as early as October 22, 2014.

The spreading of electronic invoicing can be a crucial factor for the evolution and the digitization of Italy, since it is potentially able to foster the modernization and simplification, not just for business management processes, but also for "audit" procedures of country's fiscal agency. It represents an important key step for the digitization of administrative processes, recording in recent years a growing interest by businesses, especially after the introduction of the obligation concerning VAT relations with the public administration. In this context, the interchange system has assumed a fundamental role as an instrument that facilitates relations between companies and public administrations, as well as between companies and companies. After the approval of the law number 244 of 24 December 2007 and the consequent introduction of electronic invoicing obligation with Government offices and the public administration in general, the system was also made available to commercial relations between private individuals. The legislative decree number 127 of 5 August 2015 had provided for

⁵¹ Article No. 9 of Law No 23 of 11 March 2014.

the possibility for private subjects to issue the document in electronic format⁵², but this faculty became an obligation after the approval of the law 205/2017, which imposed the obligation of generalized electronic invoicing adoption within the B2B and B2B relations.

The aim of this chapter will be to give, in the first place, a general overview over the Italian legislative framework concerning the electronic invoicing, focussing on the recent evolutions and developments that shaped the legislation in question. The discussion of this matter will pursue going through the obligations of VAT registered entities with an insight into the legal and technical aspects of the electronic invoice management.

2.1. National regulatory profiles on e-billing

The 2018 Budget Law⁵³ includes significant changes in the area of electronic invoicing in order to increase the ability of the Tax Administration to prevent and fight against VAT evasion, in addition to initiate a path towards the implementation of new administrative and accounting simplification rules.

The intervention was aimed at extending the obligation to issue invoices electronically, currently scheduled with regard to the Public Administration alone. In particular, it was envisaged to introduce the obligation to issue electronic invoices within B2B and B2C operations in a two-stages design: (1) according to the original version of subparagraph 917 of the 2018 Budget Law, e-invoice anticipation was envisaged in the application of the mandatory electronic invoicing process on 1 July 2018 for the supply of gasoline or oil intended for use as motor fuels⁵⁴ and for the services rendered by subcontractors within the supply chain of

⁵² Article 1(2) states that «A decorrere dal 1° gennaio 2017, il Ministero dell'economia e delle finanze mette a disposizione dei soggetti passivi dell'imposta sul valore aggiunto il Sistema di Interscambio ..., ai fini della trasmissione e della ricezione delle fatture elettroniche...», thus opening up the possibility to private business relations.

⁵³ Law No. 205 of 27 December 2017.

⁵⁴ Decree Law No. 87 of 13 July 2018, amending Article 1, subparagraph 917, letter a), of 2018 Budget Law, has required for the fuel sale intended to be used as fuel for engines, electronic invoicing is applied from 1 July 2018 with the exception of those fuel sales to taxable persons at road distribution plants. For the latter, the obligation enters into force on 1 January 2019. The obligation of electronic invoicing from 1 July 2018 is confirmed for the sales of petrol and diesel by fuel wholesalers or oil companies.

companies involved in a contract concluded with a Public Administration. (2) following the amendment made by the 2018 Budget Law, subparagraph 3 of article 1, Legislative Decree n. 127/2015 contains specific provisions establishing that for the supply of goods and services, performed to private subjects and firms resident or established in Italy, must be issued an invoice in electronic form, via the SdI channel, as of January 1, 2019 for all the B2B and B2C economic operations. This will affect all the transactions between private parties.

From a regulatory point of view, the Budget Law 2018 has amended, among other things, the Legislative Decree 5 August 2015, n. 127 issued pursuant to Article 9, paragraph 1, letters d) and g), of the Law of 11 March 2014, no. 23 on the electronic transmission of VAT transactions and monitoring of sale of goods carried out through vending machines. Article 2 of the Legislative Decree n. 127/2015 established the obligation of electronic storage and the electronic transmission of the daily payment data deriving from the use of vending machines since 1 January 2017. Subsequently, the aforementioned deadline of 1 January 2017 was deferred to 1 April 2017 by the article 4, paragraph 6, Legislative Decree n. 193/2016.

In September 2017, Italy requested the authorization⁵⁵ to derogate from Articles 218 and 232 of the VAT Directive in order to be able to impose mandatory electronic invoicing. Specifically, the Italian Government has submitted an exemption request to obtain authorization to apply mandatory electronic invoicing to all taxable persons established on the national territory, except for some small taxable persons, and to send invoices to the SDI, managed by the Italian Revenue Agency. More in detail, the request for exemption promoted by Italy gathered up the followings: (1) accepting invoices and documents or messages only in electronic format if they are issued by taxable persons established on the Italian territory, excluding those belonging to benefit schemes, as those called "*regime di*

⁵⁵ Directive 2006/112/EC outlines that a specific derogation is necessary to encourage the use of electronic invoices in relations with companies. The Community rule does not impose any conditions on the optional introduction of electronic invoicing between companies but a specific authorization is required to make it an obligation. With regard to this, Article 395 states that the Council may authorize each Member State to introduce special measures derogating from the Directive, with the aim of simplifying the collection of the tax or avoiding certain tax evasion or avoidance schemes.

*vantaggio*⁵⁶" and "*regime forfettario*⁵⁷". (2) arranging that the use of electronic invoices issued by taxable persons on the Italian territory is not subject to the recipient's agreement⁵⁸. With the document COM (2018) 55 final of 5 February 2018, the European Commission has formulated a proposal authorizing Italy to introduce this obligation from 1 July 2018 to 31 December 2021, on the understanding that if Italy wishes to obtain an extension must present a report containing an assessment of the effectiveness of the measure adopted in the fight against VAT evasion, as well as tax collection efficiency. Subsequently, with the execution decision n. 2018/593 of 16 April 2018, the EU Council has authorized Italy to introduce the obligation of electronic invoicing for all the taxable subjects established within the Italian territory, to the exception of the small businesses, and to channel invoices into the SDI. In this way, the Italian Government was in fact authorized to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the Common system of value added tax.

2.1.1. Regulatory developments

The electronic invoice and the rules for its filling, transmission and storage began to be addressed with the introduction in the European legal system of the Council Directive 2001/115/EC of 20 December 2001, implemented in Italy by the Legislative Decree n. 52 of 20 February 2004, which also amended articles 39 and 52 of the Presidential Decree n. 633/1972 relating to the keeping and storage obligations of registers and documents and to audit accesses and inspections. Article 1 of Legislative Decree n. 52/2004 has provided for a first complete replacement of Article 21, D.P.R. n. 633/1972, by innovating the regulation governing invoicing from the point of view of both the identification of the subject obliged to issue the document and of determining its content and the time of

⁵⁶ Article No. 27, subparagraphs 1 and 2, Legislative Decree n.98 of 6 July 2011 amended by Law No. 111 of 15 July 2011.

⁵⁷ Article No. 1, subparagraphs from 54 to 89, Law n.190 of 23 December 2014.

⁵⁸ The provision dictated by article 232 of the Directive 2006/112/EC specifies that recourse to electronic invoicing is subordinated to the agreement and subject to the acceptance by the recipient.

issuance of the same⁵⁹. The issue of the Digital Administration Code⁶⁰, which came into force on 1 January 2006, is of considerable importance. It provides for an organic framework on the use of information and communication technologies and the legal principles applicable to the IT documents and electronic signatures. The Prime Ministerial Decree of 3 December 2013 has identified and provided for the technical rules on the electronic document record-keeping system, expanding the concept of storing IT documents on digital media with the introduction of the "storage system", clearly distinct from the document management system (1) describing the cycle of IT documents and IT files management as part of the record-keeping process from the moment the producer takes charge of it; (2) establishing the procedures, the technologies and the organizational models to be adopted; (3) identifying the figure responsible for electronic storage, which must define and implement the overall conservation system policies⁶¹. Already in 2005, the circular of the Italian Tax Revenue Agency n. 45/E of 19 October defined the electronic invoice as an electronic document prepared in electronic form according to specific procedures that guarantee the integrity of data contained and the unequivocal attribution of the document to the issuer, without the need to produce a paper-based format. In this case, the electronic invoice is denoted as an IT document, that is to say an electronic representation of acts, facts and legally relevant data⁶². In the aforementioned circular n. 45/E/2005, it was specified that the electronic transmission constitutes an additional way of issuing invoices, which can only be used in case of prior agreement between the parties, as the transferee or client must possess the appropriate technical instruments or tools to receive the legally relevant document. It is with Article 1, subparagraphs from 209 to 214, of the Law n. 244 of 24 December 2007 (2008 Financial Law), which is asked to take stock of

⁵⁹ See paragraph 1.2.1. "Changes in the European rules" above.

⁶⁰ The Code of Digital Administration (CAD) is a single text that brings together and organizes the rules concerning the computerization of the Public Administration in its dealings with citizens and businesses. Established with the Legislative Decree N. 82 of March 7, 2005, was subsequently amended and integrated first with the legislative decree n. 179 of 22 August 2016, and then with the legislative decree n. 217 of 13 December 2017 in order to promote and enforce digital citizenship rights.

⁶¹ See paragraph "The electronic invoice storage" below.

⁶² Article No. 15, subparagraph 2, Law n. 59/1997 «*Delega al Governo per il conferimento di funzioni e compiti alle regioni ed enti locali, per la riforma della Pubblica Amministrazione e per la semplificazione amministrativa*».

the situation regarding the methods of issuing, transmitting and storing electronic invoices according to the indications contained in the Presidential Decree n. 633 of 26 October 1972, as modified by the Legislative Decree n.52 of 20 February 2004. This is the rule that establishes the electronic invoicing as mandatory within the Public Administration. Those invoices in paper format can no longer be accepted by the Public Administration, nor the latter can proceed to the relative payment. As already discussed in the previous chapter, this intervention is part of the European review process regarding the digitization of administrative procedures including, the "i2010" initiative that encourages member states to adopt an adequate regulatory, organizational and technological framework through which better managing in electronic form procurement processes.

The first implementing decree of Law n. 244 of 2007 is the Ministerial Decree of 7 March 2008, entitled «*Individuazione del gestore del Sistema di Interscambio della fatturazione elettronica nonché delle relative attribuzioni e competenze*», which identifies in the Revenue Agency the manager of the Interchange System (SDI) for sending and receiving electronic invoices to the Public Administration, defining tasks and responsibilities. The Decree in question then identified in Sogei S.p.a. the body responsible for the instrumental services and the technical management of the SDI. Along with the provision for the obligation to issue, transmit, store and archive invoices electronically, issued when dealing with the Public Administration, the Law n. 244/2007 referred to a decree issued by the Ministry of Economics and Finance for the definition of the technical rules, the guidelines for the adjustment of internal procedures and the date from which to make the obligation effective. The second implementing decree of article 1, subparagraphs 209 to 214 of the 2008 Finance Law, was the Decree of the Ministry of Economy and Finance n. 55 of 3 April 2013 on the basis of which the technical rules for the management of electronic invoicing processes towards the Public Administration are outlined and identified, for classes of Public Administrations, the starting dates of the electronic invoicing obligation: it was disposed the 6 June 2014 for Ministries, tax agencies,

social security and welfare institutions and 31 March 2015⁶³ for all other Public Administrations included within the ISTAT list called "List of Public Administrations included in the consolidated income statement" (including local administrations). In the subsequent circular n. 1 of 31 March 2015, clarifications were provided on the provisions contained in the aforementioned Ministerial Decree 55/2013, with particular reference to the transcription and upload of IPA records, payment public debts banning in the absence of an electronic invoice and the impossibility to deliver the latter to institutions.

Another relevant law concerning electronic invoicing is the n. 228 of 24 December 2012 (so-called Stability Law), which introduced a series of new billing news. The law transposed the legal requirements in conformity with Directive n. 2010/45/EU in which, among the various provisions, the Member States are encouraged to adopt and adjust their regulatory, organizational and technological frameworks to manage electronically the entire cycle of purchases. The 2013 Stability Law opened up a new process that included a series of tax simplifications aimed at reducing administrative burdens for citizens and businesses. The law intervened on the subject of electronic invoice with article 1, subparagraph 325 lett. d), radically changing the subparagraphs 1 to 6 of the art. 21 of the D.P.R. n. 633/1972 on the billing of operations. In particular, the content of the invoice is modified, the issue of the electronic document is regulated. In the new subparagraph 1 of article 21, in essence, the electronic invoice is, in fact, being equated to the paper one in order to guarantee the widest diffusion. The standard defines the electronic invoice as such document that is issued and received in any electronic format, that the use of the electronic invoice must be subject to the acceptance by the recipient and, finally, indicates that the invoice shall be considered issued at the time of delivery, dispatch, transmission to the purchaser. The issue of invoice, either on paper or electronic format, by the customer or third party residing in a country with which there is no legal instrument governing the mutual assistance is allowed on condition that prior notification is given to the Italian Revenue Agency and

⁶³ This legislative deadline was anticipated to March 31, 2015, by Article 25, subparagraph 1 of Decree Law n. 66/2014.

provided that the national taxpayer has been on business for at least five years; any imposition or contestation of substantial violations in the field of value added tax should never be notified during the previous five years⁶⁴.

The Italian Revenue Agency clarified that, as indicated in the Circular n. 18/E/2014, the determining factor distinguishing electronic invoices from paper ones is not attributable to the original kind of format used for its creation, but to the means of issuing, which must be done electronically. The Agency also states that the invoice issued by means of accounting or word processing software is not considered "electronic" and then sent and received in paper form. On the other hand, an electronic bill is considered to be an invoice issued in paper format, transformed into an electronic document, sent and received via electronic channels (for example electronic mail), provided that the legal requirements are respected (authenticity of origin, integrity of the content and readability).

Article 21, subparagraph 1, D.P.R. n. 633/72 expressly indicates that among the conditions required for the qualification of the invoice as "electronic" there is the acceptance by the recipient. The term "acceptance", as the Circular n.18/E/2014 clarifies, does not necessarily imply a formal agreement between the parties, prior to and after the billing of operations. Therefore, a prior agreement, however useful and appropriate, is not required, as it was evidenced by Circular n. 45/E/2005. The need for the receiver's acceptance shows the asymmetry between the issuer and the recipient of the invoice: in fact, the seller's decision to electronically bill does not bind the buyer, but the latter decides whether to accept the electronic document or not on its own.

The Legislative Decree n. 127 of 5 August 2015 has subsequently extended the electronic invoicing also to the relations between private individuals on an optional basis. With a subsequent decree of 4 August 2016, the Minister of Economy and Finance has implemented Article 1, subparagraph 5, Article 3, subparagraph 1, lett. d) and Article 4, subparagraph 3, of Decree n. 127/2015, with regard to electronic transmission of VAT operations with particular reference to: (1) new simplified procedures for checking the elements acquired by the revenue agency on the

⁶⁴ Art. 1, subparagraph 325, letter d), Law No. 228/2012.

comparison between the data reported by VAT taxable persons and transactions carried out by them, in order to both reduce the obligations on these subjects and not to hamper the normal performance of the economic activity of the same; (2) the reduction of the terms of tax assessment to the parties that guarantee the traceability of made and received payments; (3) the identification of small VAT taxpayers to which the informative elements necessary for the periodic liquidation and for the annual VAT declaration are made on-line available.

Following the definitive approval and consequent publication in the Official Journal of the Law n. 205 of 27 December 2017 (the so-called Italian State Budget Law for the year 2018), important changes have been made to the Legislative Decree n. 127/2015 with a view to introduce the general obligation to issue electronic invoices between all VAT taxpayers (so-called B2C) and private citizens (so-called B2C). This law triggered the general obligation of electronic invoicing between private individuals since 1 January 2019. The same Law postponed the obligation⁶⁵ of electronic invoicing to the transfer of goods to persons domiciled or resident outside the European Community for a total amount of over EUR 154.94 intended for personal or family use, to be carried in the luggage outside the customs territory of the European Union since 1 September 2018⁶⁶. Finally, it anticipates invoicing by electronic means to 1 July 2018 for those operations related to the sale of gasoline destined to be used as motor fuels⁶⁷ and to the services rendered by subcontractors in public tenders⁶⁸.

The Revenue Agency intervened publishing the provision n. 89757/2018 of 30 April 2018 dictating the technical rules: (1) for the issuance and receipt of electronic invoices for the supply of goods and services performed by residents, established or identified within the national territory, through the interchange system; (2) for the telematic transmission of data pertaining to the sale of goods and services of cross-border services. The text is accompanied by the technical specifications for

⁶⁵ Modifying article 4-bis of the Decree Law No. 193 of 22 October 2016.

⁶⁶ The previous formulation provided for the obligation with effect from 1 January 2018.

⁶⁷ With the provision n. 73203/2018 of 4 April 2018, the Revenue Agency has specified the means of payment deemed suitable for the purpose of deducting the value added tax related to the operations referred to in art. 19-bis.1 letter d) of the Presidential Decree n. 633/1972.

⁶⁸ The exceptions are for the sales of motor fuel at road distribution plants, for which Decree Law No. 87/2018 has postponed the obligation to 1 January 2019.

the transmission of the electronic file in Annex A.

Finally, with the provision n. 73203/2018, the Revenue Agency has identified the procedures for granting the delegation to one or more intermediaries for the use of services connected with electronic invoicing, particularly for the consultation and acquisition of electronic invoices and the registration of the electronic address to which the buyer intends to receive invoices.

2.1.2. The obligation to perform electronic invoicing in dealings with Public Administration

The invoicing towards the Public Administration, has had a major breakthrough with the 2008 Budget Law, in which it has been established that this must take place exclusively in electronic format. Pursuant to article 21, subparagraph 1 of Presidential Decree n. 633/72, the electronic invoice has been introduced, the transmission of which takes place through the interchange system that is mandatory for all Public Administrations, managed by the national Revenue Agency. The economic operator, i.e. the person who carries out the billing process electronically towards the Public Administration through the interchange system, must prepare, issue and transmit all the invoices autonomously or make use of an intermediary.

Art.1, subparagraphs 209-214, Law n. 244/2007 introduced the obligation which is now being discussing, that is the use of the electronic invoice with Public Institutions, but subordinating its operation to the issuing of a specific regulation⁶⁹.

⁶⁹ Ministerial Decree of 3 April 2013, No. 55 which establishes the operating procedures for the issuance, transmission and receipt of electronic invoices and the dates from which the obligations and prohibitions prescribed by the Law will take effect.

The provisions related to the issue of the electronic invoice to the Public Administration expand the general provisions established by current legislation. The general legislation considers the electronic invoice that document issued and received in any electronic format. This means that, regardless of the format used, the invoice is electronic if issued and received electronically. The definition of electronic invoice is mainly to be found in the Legislative Decree of 20 February 2004, No. 52 which, implementing Directive 2001/115/EC, has rewritten the article 21 of the Decree No. 633 of 1972, and allows for the complete replacement of analogue documents with electronic ones according to common standards. In relations with the offices of the Public Administration, in addition to issuing and receiving in electronic format, the use of the XML format was envisaged as well as new obligatory data was required: the CIG code, identification code of tender that allows to indicate the contract underlying the operation; the CUP code, unique project code that determines the type of operation, and the IPA code.

The following regulatory restrictions emerge from the 2008 Finance Act: (1) Public Administrations can accept only those invoices issued in electronic format and must not proceed with the payment of the services if they were transmitted in analogue format; (2) suppliers must adopt the electronic format for sales invoices; (3) electronic invoices must be issued in accordance with the standard format (XML – Extensible Mark-up Language)⁷⁰ established by the Revenue Agency and sent via the interchange system. Each XML document is digitally signed by the economic operator who issues the invoice. In this way, the integrity of the information contained in the invoice and the authenticity of it are guaranteed. The file is then transmitted to the exchange system through five possible transmission channels: Certified Mail (PEC), Web Interface, SDICoop Service (web-services), SDIFTP Service (FTP), SPCoop Service (web-services)⁷¹. The offices of the Public Administration can therefore receive electronic invoices through the interchange system, as required by subparagraph 211 of the law n. 244/2007, by means of the appropriate indication of the IPA code⁷², which represents that unique code that identifies each office of the P.A..

As established by the Ministerial Decree n. 55 of 3 April 2013, the e-invoicing obligation started on 6 June 2014 and concerned all the invoices issued to ministries, tax agencies, national social security institutions and social assistance⁷³ (INPS, INARCASSA, CNPADC, ENPAM, CIPAG, ENPACL, etc.), but even from 6 December 2013, the interchange system was available for administrations who voluntarily or on the basis of specific agreements with all their suppliers, wished to engage in the billing electronic process. On 31 March 2015, electronic invoicing became mandatory also for all other Public Administrations, including local ones (as for municipalities and provinces). More precisely, from this date among the Public Administrations receiving e-invoices are included all the subjects, also

⁷⁰ See Note 63.

⁷¹ Annex B, Ministerial Decree No. 55/2013.

⁷² The Public Administration Index (IPA) is the official archive of Public bodies and public service operators. Within this archive, the Public Administrations upload the identification codes of their offices that require suppliers to create their invoices and allow proper processing by the interchange system.

⁷³ Identified as such on the list of Public Administrations published by ISTAT before July 31 of each year.

autonomous institutions⁷⁴, which contribute to the achievement of public finance objectives defined at national level and which are included in Italy's consolidated income statement and identified by ISTAT every 30 September of each year⁷⁵. All the administrations referred to in Article 1, subparagraph 2, Legislative Decree 30 March 2001, n.165 and in any case the independent Authorities⁷⁶ must also be included in the range of actors to whom the obligation applies. This includes companies and administrations of the State with autonomous regulations, Regions, Provinces, Municipalities, Mountain Communities, University Institutions, Chambers of Commerce, companies and bodies of the National Health Service and all non-economic public bodies both national, regional and local. The recipients also include federations and professional associations⁷⁷ since they are non-economic public bodies.

In general, subjects that are affected by the obligation concerning electronic invoicing are: Public Administrations, for issuing invoices to other Public Administrations or for receiving invoices from their suppliers (public or private); businesses and private self-employed workers, when working on public contracts for Public Administrations, and professional operators (accountants, labour consultants, tax advisors, trade associations, financial intermediaries, etc.), who wish to manage the electronic invoice process for their customers.

2.1.3. Obligated and exempt taxable entities

Generally, those who are obliged to issue an invoice pursuant to art. 21 and 21-bis, Presidential Decree n. 633/1972, are the transferors or service providers. However, article 21, subparagraph 1, Presidential Decree n. 633/1972, grant the possibility to the transferor to entrust the buyer or a third party with the invoice drawing up and

⁷⁴ Autonomous Administrations identified in Art. 1, subparagraph 209, Law n.244/2007 are parties to whom the electronic invoicing obligations were to apply.

⁷⁵ Art. 1, subparagraph 2 of Law n. 196/2009.

⁷⁶ They are: the Competition and Market Authority, the Authority for Telecommunications, the Personal Data Protection Authority, the CONSOB, the Insurance Supervisory Authority (ISVAP), the Regulatory Authority for Electricity and Gas, the Supervisory Authority for Public Contracts, the Commission for the implementation of the law on strike in essential public services.

⁷⁷ As per note No. 1858 of October 27, 2014 of Department of Finance.

submission, while maintaining the responsibility on the provider's part for the violations committed.

The subparagraph 909 of the article 1 of the Law n. 205/2017 in order to rationalize the billing and registration process, has made the issuance of electronic invoices compulsory through the interchange system for the sale of goods and services carried out between residents, established⁷⁸ or identified⁷⁹ in the national territory. Particularly, all residents, established or identified in Italy, who transfer goods or provide services to other residents, established or identified in Italy, such as shopkeepers, artisans, professionals, businesses, restaurants and hotels, are affected by the obligation under discussion.

Conversely, those applying the "forfettario" regime (Law N. 190/2014, article 1, subparagraphs 54-89) or the tax benefit regime (Legislative Decree N. 98/2011, art. 27, subparagraphs 1 and 2) are expressly excluded from the obligation of electronic invoicing. In summary, these subjects will continue to issue invoices in paper format. However, the legislative decree n. 127/2015, nothing has to do with those invoices received by the exempt tax payers. At this point, the provision of the Revenue Agency of April 30, 2018, which specifies that in the case of a person in a tax-benefit scheme or "forfettario" scheme, the lender must in any case issue an electronic invoice and send it to the interchange system. The latter will make the electronic document available in the tax payer's reserved area and it will be the lender's responsibility to inform the buyer that the electronic document is available on the Revenue Agency's website. It should be noted that these subjects, although not obliged to issue electronic invoices within B2B transactions and B2C transactions, are obliged to prepare the electronic document in B2G transactions and with the Public Administration. Last but not least, the exclusion from the

⁷⁸ Established subjects shall mean those non-residents who carry out taxable transactions for VAT purposes through a secondary office, or a permanent establishment which, in accordance with Article 11 of the European Union Regulation of 15 March 2011, No. 282, means any organization characterized by: (1) a sufficient degree of permanence in a place in the State of non-residence; (2) the presence of technical and even human elements; (3) the execution of significant operations for the purpose of value added tax.

⁷⁹ The subjects identified are those who do not have residency but have an Italian VAT number, obtained through: (1) the appointment of a VAT representative pursuant to art. 17, paragraph 2 of the Presidential Decree n. 633/1972 and of the Art. 1 of the Presidential Decree No. 441/1997; (2) direct identification, in accordance with article 35-ter of the Presidential Decree No. 633/1972.

obligation is not binding for these subjects, so the latter may decide to opt for the electronic invoicing scheme.

The introduction of the electronic invoice does not reduce the facilities provided for the exempted farmers who will not have to issue an electronic invoice, just as now happens for paper invoices. Art. 34, subparagraph 6, Presidential Decree n. 633/1972 provides that the agricultural producers who have realized, or that foresee to realize, a business volume not exceeding EUR 7,000, are exempt from the payment of VAT and from all the documentary and accounting obligations, without prejudice to the obligation to number and keep the invoices received and the customs bills. It will therefore be the responsibility of the buyers, if they purchase goods or services in the course of business, to issue invoices on behalf of the farmer (self-invoice), with terms and conditions set forth in art. 21, Presidential Decree n. 633/1972. Anyway, to conclude, the agricultural producer, will be obliged to issue an electronic invoice during the calendar year following the one in which the aforementioned limit of EUR 7,000 has been exceeded.

2.1.4. Incentives and simplification

The 2018 budget law intervened by making important changes to the Legislative Decree n. 127/2015, concerning the electronic transmission of VAT operations and the control of the sale of goods carried out through vending machines. The subparagraph 909 of the law n. 205/2017 amended Articles 1 and 2 and completely rewrote Articles 3 and 4 of the aforementioned decree n. 127/2015. The simplifications and new forms of facilitation concern, in particular, an alleviation of accounting and administrative obligations, in addition to the reduction of the tax assessment deadlines for the parties that guarantee the traceability of payments. (1) According to the new article 3 of the aforementioned Decree, modified by art.1 of the Legislative Decree n. 205/2017, has included new incentives in favour of those taxpayers who guarantee the traceability of payments received and carried out relating to transactions exceeding EUR 500. From 1st January 2017 taxpayers

who have opted for the telematic transmission of invoice and daily charges data and ensure the traceability of the payments of the same, received and made in the ways established in Article 3 of the Decree of the Ministry of Economy and Finance of 4 August 2016⁸⁰, benefit from the reduction to two years of the prescription period for the tax assessment activity⁸¹. The option must be exercised online by December 31 of the year preceding the year in which data are transmitted, or from the first day of activity for businesses starting the activity during the year. This option is valid for the calendar year in which data transmission starts and for the next four calendar years⁸². (2) The Italian Revenue Agency made available to artists and professionals, in addition to companies admitted to the simplified accounting scheme referred to in Article 18 of Presidential Decree n. 600/73, including retailers who have opted for the electronic transmission of daily charges data referred to in Art. 2, subparagraph 1, of the Legislative Decree n. 127/2015: (a) the information necessary for the preparation of the periodic VAT clearance prospectuses; (b) the draft of the annual declaration of VAT and income tax; (c) drafts of the payment models f24 bearing the amount of the taxes to be paid, offset or requested as a reimbursement. (3) The obligation to prepare and present intrastat models on purchases of goods and services provided by entities established in another EU country falls. (4) Art.11, subparagraph 2-bis, of the Decree Law n. 87/2018 added the new subparagraph 3-ter to Article 1, Legislative Decree n. 127/2015, providing that the subjects required to submit the "Spesometro" form are exempted from the obligation of noting sales and purchases invoices in the VAT registers, set out in articles 23 and 25, Presidential Decree n. 633/72. However, the new provision refers to the invoices issued/received on the basis of subparagraph 3, Art. 1, Legislative Decree n. 127/2015, that are those issued in electronic form. The option of

⁸⁰ Article 3 provides that payments must be made by bank or postal transfer, debit or credit card, bank, postal or postal check bearing the non-transferability clause, while cash payments are allowed for amounts not exceeding at EUR 30.

⁸¹ Article 57, subparagraph 1, of Presidential Decree No. 633/1972 and Article 1, paragraph 1, of Presidential Decree n. 600/1973 define in five years, from the one in which the declaration was presented, the expiry date for tax assessments provided for in article 54 and in the second paragraph of Article 55 of the Decree n. 633/1972.

⁸² Pursuant to Article 4 of the Decree of 4 August 2016, taxpayers must disclose for each tax period the existence of the conditions for the reduction of prescription period in the related annual declaration of income. This right is not provided for each tax period for those taxpayers who have made or received even a single payment through instruments other than those indicated in Article 3 of the Decree in question.

choosing for not keeping the VAT records will be most likely generalized to all taxpayers, as the invoice will become electronic from 2019 and will have to be sent via the interchange system⁸³.

Thus, it emerges that the Legislator's objective is to move from a system of self-liquidation of taxes to a new centralized system for taxes computing. To this end, thanks to the data sent to the Agency, it will one day be possible for each tax payer to settle VAT, the annual VAT return, and the f24 models containing the taxes to be paid. Practically, the sending of electronic invoices transmits in real time an informative content of greater detail with respect to the information acquired through the electronic transmission of the daily charges data of the invoices issued and received. This translates into an increase in compliance and the improvement and greater efficiency of control activities made by tax agencies.

2.1.5. Purchases of fuel and subcontracts with the Public Administration

With the aim of increasing the capacity of the administration to prevent and effectively combat tax evasion and VAT fraud in the mineral oil sector, Law n. 205 of 27 December 2017 (so-called "Budget Law 2018") introduced an articulated series of innovations into our legal system. These include the obligation of electronic invoicing for sales of petrol and fuel intended for use as motor fuels⁸⁴ starting from 1 July 2018. Subparagraph 920 of the Budget Law 2018, amending the third paragraph of Article 22 of Presidential Decree n. 633/72, provides that sales of motor fuels at road distribution plants must take place through the

⁸³ From a first reading, the rule seems to be confused as it specifies that the beneficiaries of the exemption are «*i soggetti obbligati alla comunicazione dei dati delle fatture emesse e ricevute*», but then «*ai sensi del comma 3*», where however subparagraph 3, having already been amended with effect from 1 January 2018, now refers to the electronic invoicing and no longer to «*comunicazione dei dati delle fatture emesse e ricevute*». Its application should entail the exemption from keeping the VAT registers for all those taxpayers who, as a result of the provisions of the revised Article 1, subparagraph 3, of Legislative Decree No. 127/2015, are obliged to adopt electronic invoicing.

⁸⁴ The Revenue Agency has clarified that reference is to be made to petrol and diesel oil intended to be used as engines fuels for use in vehicles (Circular n. 8 of 30 April 2018). Therefore, the obligation does not apply to engines that are part of power generators, heating systems, various tools or gardening. For the latter, the obligation will start from January 1, 2019.

issuance of electronic documents⁸⁵ to all VAT registered entities.

However, recent provisions have made changes to the aforementioned law, substantially extending the time limit for the obligation only for road distribution plants. In fact, the amendments to the Art.1 of the Law n. 205/2018, laid down that diesel and petrol sales intended to be used as engines fuels for use in vehicles are subject to the electronic invoicing from 1 July 2018 with the exception of sales to subjects occurring in roadside service stations. For the latter, the electronic invoicing obligation will enter into force on 1 January 2019. In practice, the obligation is currently being confirmed for fuel wholesalers and oil companies.

On this matter, the same Law introduced new specific provisions⁸⁶ on the deductibility of fuel purchase costs and of the related VAT, imposing for this purpose the use of traceable means of payment, such as credit cards, debit or prepaid cards issued by financial operators. As clarified by the Italian Revenue Agency⁸⁷, for the purposes of deductibility the payment has not necessarily to be made with an electronic card registered to the employer, as it is sufficient payments are traceable to the latter according to an unbroken chain of payments thanks to traceable instruments. From this, it follows the legitimate deduction of the costs incurred by employees, and filled out in the expense report, through the use of their credit card and charged to the employer. The provision n. 73203/2018 specifies, moreover, that such forms of payment must be used, in the absence of these failure of the right of VAT and costs deductibility arises, even in the cases in which payments and sales occur at different moments, as holds for netting contracts⁸⁸.

⁸⁵ According to the circular No. 8/E/2018, in the event that several operations are carried out simultaneously to be displayed in a single invoice and one of them, as for fuel, is subject to the obligation of electronic invoicing, this form is imposed to the entire document and for all operations made.

⁸⁶ Amending Art. 164 of the TUIR, with the introduction of the new paragraph 1-bis, and article 19-bis.1, subparagraph 1, letter d) of Presidential Decree n. 633/1972.

⁸⁷ Revenue Agency Director's provision n. 73203 of 4 April 2018 referred to the following instruments: checks (bank and postal or otherwise); money orders (bills and postal services); electronic means referred to in Art. 5, Legislative Decree n. 82/2005, including, by way of example, bank or postal transfer, postal order, credit cards, debit or prepaid cards or other electronic payment instruments that also allow for bank account be debited.

⁸⁸ A netting contract holds in the case of a contract of administration between the roadside station and the oil company, relating to the supplies made directly by the user, who uses special company cards for the payment.

These supplies are billed to the vehicle's user, while the roadside station's operator should arrange for the operation carried out to be charged to the oil company.

Due to the changes introduced by the Decree Law n. 79/2018, fuel reporting regulation is still in force until December 31, 2018, although the obligation to pay by traceable means makes the use of it unnecessary. This consideration derives from the Art. 1, paragraph 3-bis, Presidential Decree n. 444/1997 which, by way of derogation from the fuel reporting provisions, provides for the exemption on the condition that fuels are purchased exclusively through credit cards, debit cards or prepaid cards⁸⁹. In essence, from 1 July 2018 to 31 December 2018, it can be continued to either report fuel and diesel purchases occurring in roadside service stations or pay by traceable means.

Anticipation on July 1, 2018 of the electronic invoicing obligation for services rendered by subcontractors within the business industry which operates with the Public Administration remains unchanged, since Article 1, subparagraph 917, lett. b) of the Budget Law 2018 has not been modified. The term "business industry" refers to the group of subjects involved in the contract's realization cycle, including leases and supplies of goods and services. According to Article 25, subparagraph 2, of the Law Decree n. 66/2014, electronic invoices issued for services provided by subcontractors within the business chain must therefore indicate the tender identification code (CIG) and the single project code (CUP) reported in the invoices issued by the lead company (originator) to the Public Administration. With respect to the services provided by subcontractors as part of a contract signed with the Public Administration, the provision of the Revenue Agency no. 89757 of 30 April 2018 clarified that the provision is applied only to direct relations between the lead company and the Public Administration, as well as between the originator and those suppliers it has recourse of, excluding those who only relate with the originator's suppliers. Therefore, the legislative provision applies only to direct relations with the Public Administration or the main contractor.

⁸⁹ Issued by financial operators, subject to the obligation to communicate in the tax register provided for by Art. 7, subparagraph 6, Presidential Decree No. 605/197.

2.1.6. Cross-border transactions

The introduction of the electronic billing makes the communication of purchase and sale invoices data redundant, being effectively repealed from 2019. The Budget Law 2018 has provided for the generalized repeal of the so-called "Spesometro" form, from 1 January 2019, from the entry into force of the e-invoicing obligation. Therefore, the deadline scheduled for February 28, 2019 for 2018's third and fourth quarter VAT data submission is the last one expected⁹⁰. The Budget Law 2018, while it abolishes the "Spesometro" form, Art. 1, subparagraph 909 provides for VAT subjects, the obligation to transmit to the Revenue Agency data relating to the sale and purchase of goods and services made and received by parties not established in the territory of the State by the last day of the month following the date of the document issued or that of the date of receipt of the document proving the operation. It's about the "Esterometro" form, which is the obligation for the registered VAT resident, established or identified within the Italian territory, to transmit electronically data concerning cross-border transactions, if not formally documented by customs bills or electronic invoices. In fact, cross-border transactions are excluded from the obligation of electronic invoicing, i.e. all purchase and sale transactions carried out with parties not established within the National territory, which must be reported through the aforementioned model. For the omission or incorrect transmission of cross-border data, sanctions provided for by the new subparagraph 2-quater, Article 11, of the Legislative Decree n. 471/1997, are applicable. The subparagraph 915 of the Law n. 205/2017 provides, in fact, for those who omit or commit errors in transmitting cross-border data, the administrative penalty of EUR 2 for each invoice, up to a maximum limit of EUR 1,000 for each quarter. At the time when the transmission is carried out within fifteen days following the established deadline or if, within the same term, the tax payer arranges for corrections need to be done, sanctions are reduced by half, within the maximum limit of EUR 500.

⁹⁰ Art. 11, subparagraph 1, Decree Law n. 87/2018.

2.1.7. Breach of obligations and sanctions

Pursuant to Articles 21 and 23 of Presidential Decree n. 633/1972, the invoice must be issued at the time of operation and must be recorded within fifteen days in the appropriate sales invoices register. Those invoices issued beyond the aforementioned terms are considered belated, giving rise to the sanctions referred to in Art. 6, subparagraph 1 of the Legislative Decree n. 471/1997⁹¹. It should be noted that the aforementioned Decree was subject to amendment with the reform of tax penalties, whose entry into force was brought forward to 1 January 2016⁹²: particularly, Art. 15, subparagraph 1, lett. f), n. 1) of the Legislative Decree n. 158/2015 replaced the old penalty from 100% to 200% of the tax amount not correctly and regularly enshrined in the document, with the new one from 90% to 180%, with a minimum of EUR 500⁹³. However, a new period was added to the aforementioned first paragraph of Art. 6, for which the fine is due in the sum of EUR 250 to 2,000 when the violation has not affected the correct periodic VAT clearance. If, therefore, invoice issuing is lagging behind, but has not however affected recurrent VAT clearance process, then it should apply the new fixed sanction referred to in the aforementioned third period, considerably more favourable than the others on percentage terms.

Subparagraph 6 of the Article 1 of the Legislative Decree n. 127/2015, entirely rewritten by Article 1, subparagraph 909 of the Law n. 205 of 27 December 2017, provides for specific administrative sanctions in case of electronic invoice issuing

⁹¹ The Court of Cassation, with sentence No. 2605 of 10 February 2016, has confirmed that issuing invoices after the deadline for VAT clearance purposes is considered belated, giving rise to the sanctions referred to in Art. 6, subparagraph 1 of the Legislative Decree No. 471/97. The cause of non-punishment pursuant to Art. 6, subparagraph 5-bis of the Legislative Decree No. 472/97, by which violations that do not cause damage to control actions, tax assessments and do not affect the tax base determination or its payment, are not punishable. As established by the Court of Cassation, in fact, late invoicing, as it involves the violation of an obligation directly and strictly instrumental to the tax determination and collection, is potentially likely to impede control activities and could affect both the taxable income determination and tax collection. In the same terms, the Supreme Court expressed its opinion on the tax payers' request for the application of sanctions, on the basis of Art. 10 of the Taxpayer's Bylaws (Law 212/2000), for which, among other things, the penalties are not in any case imposed when the violation takes place in a mere formal violation even with no tax liability (Cassation n. 656 and n. 27211 of 2014). With the ruling No. 2605 of the Court of Cassation, judges reiterated that late invoicing constitutes a substantial procedural violation therefore rejecting the application of Art. 10 above, although, as claimed by taxpayers, the late invoicing, in fact, had not caused any damage to the tax authorities.

⁹² Article 1, subparagraph 133 of Law n. 208/2015.

⁹³ Article 6, subparagraph 4 of Legislative Decree n. 471/1997.

in ways different from those required by Law. Subparagraph 6 of the aforementioned Decree clearly refers to the sanctions of Decree n. 471/1997. An invoice different from the electronic one or different from the XML format and not transmitted through the interchange system is not considered issued and therefore subject to sanctioning. Recently, however, Decree Law n. 119/2018 has intervened on the subject of the electronic invoice including, for the first half of 2019, the elimination of penalties only if invoices are issued within the specific VAT clearance period or reduced by 80 percent as long as the electronic invoice is issued not later than the following period's term.

2.2. Billing of economic operations

First of all, the invoice constitutes the document proving that the economic operation has taken place between parties, i.e. suppliers and contractors. Secondly, it is that document, either paper-based or electronic, required for both determining the correct amount of VAT due and enabling fiscal inspections undertaken by the fiscal Agency. It comes up with the normative discipline laid down in the European Directive dated 28 November 2006, n. 112/EC (hereinafter referred to as the "VAT Directive"), which needs to be read together with the Presidential Decree n. 633/1972. Specifically, Article 21 of the Decree aforementioned, sets out the definition, content and the drafting criteria of the document. Since 2013, this Article has been modified and integrated to transpose Directive 2010/45/EU of 13 July 2010, which has directly intervened to the body of Directive 2006/112/EC. The aim of the new provisions is to promote and simplify the rules on invoicing by eliminating charges and barriers: (a) by establishing the equal treatment of paper and electronic invoices, in the sense that the same procedures as for paper invoices can be applied to electronic invoices, without any increase in administrative burden related to paper invoices; (b) enabling users to choose freely the way to really ensure the presence of the electronic invoice requirements (authenticity of origin, integrity of content and legibility of invoices).

Furthermore, it should be noted that, in order to facilitate consistent interpretation

of the billing rules introduced by Directive 2010/45/EU, the European Commission has prepared the "Explanatory notes on the rules on VAT invoicing", where a dominant part concerns the rules on electronic invoicing.

At national level, the aforementioned provisions have been incorporated into Italian National Law by articles 21 and 39 of the Presidential Decree of 26 October 1972, n. 633 (hereinafter, "VAT decree"), as reformulated by Article 1, subparagraphs from 325 to 328, of the Law of 24 December 2012, n. 228 (the 2013 Stability Law).

2.2.1. Invoice definition and requirements pursuant to the Presidential Decree n. 633/1972

The invoice is the document around which the tax technique revolves, according to the principle of tax recovery and deduction. It is the corporate document that is able to substantiate a commercial operation over time from which fiscal, civil, criminal and financial implications may arise. More specifically, it is a compulsory administrative document that is drawn up by the seller (seller or lender) registered for VAT purposes⁹⁴, to prove the sale of goods or provision of services which gives the right to claim the price of the operation. Payment must be made by the buyer according to the mentioned and agreed payment terms detailed in the issued invoice. The Article 21 of the D.P.R. 633/1972, even in its current version, does not give a direct definition but defines it indirectly by determining contents, forms and modalities for the purpose of fiscal compliance. In the second period of the first subparagraph, however, a definition of electronic invoice is given, which is that document issued and received in any electronic format⁹⁵, which means that the invoice created in paper form (or electronic), scanned, signed with the electronic

⁹⁴ Sequence of figures that uniquely identifies a person who carries out a relevant activity for the purposes of indirect taxation (VAT).

⁹⁵ The definition of electronic invoice was initially instituted by the Legislative Decree 20 February 2004, No.52, implementing Directive 2001/115/EC which simplified and harmonised the methods of invoicing in the field of VAT. Subsequently, the Stability Law 2013 that, in transposing Directive 2010/45/EU, amending Directive 2006/112/EC on the common system of value added tax and billing rules, has also rewritten subparagraphs 1 to 6 of the Article 21 of Presidential Decree No. 633/1972.

signature, sent and received by email will be considered electronic⁹⁶.

As indicated in subparagraph 1, all taxable persons established in Italy who make supplies of goods or services subject to VAT, are obliged to issue an invoice for each taxable transaction. It must also be issued by non-resident subjects if they use a permanent establishment or when they operate through a tax representative.

Not all VAT liable persons are obliged to issue an invoice: in fact, retailers, owners of public businesses and craftsmen who perform services in public places or in immediate and direct relationship with private consumers do not have to issue an invoice, unless the latter is required by the client⁹⁷. However, all these subjects are obliged to declare the fees received in the exercise of their business through two alternative documents certifying the sales, such as the tax receipt and the bill of sale. The tax receipt is printed by the cash register or other fiscal measuring devices and must be delivered to the customer at the time of payment or delivery of goods⁹⁸.

Pursuant to the second subparagraph of article 21 of Presidential Decree n. 633/1972, invoices must contain the following indications: (a) date of issue; (b) the sequential number that uniquely identifies the invoice⁹⁹. In particular, article 226 of the Community Directive states that the number must be sequential, with one or more series, that identifies it unambiguously; (c) company name, name and surname, residence or domicile of the seller and the buyer, or of their tax representative; (d) VAT number of the aforementioned persons¹⁰⁰; (e) nature, quality and quantity of the goods or services purchased; (f) price and total charges

⁹⁶ On the basis of this definition, it would seem that the issue of the electronic invoice is not linked to the adoption of a specific format (PDF, DOC, XLS, TXT, XML). However, for an electronic invoice to be considered as such it must be transmitted via the Interchange System as provided for in subparagraph 3 of Legislative Decree 5 August 2015, No. 127, reformulated by subparagraph 909 of Law 27 December 2017, No. 205.

⁹⁷ Article 22 of Presidential Decree No. 633/1972.

⁹⁸ According to the latest news on the 2019 Budget Law, the obligation to electronically send tax receipts data to the Revenue Agency via a special electronic register will also come into force. The measure is intended to take effect following a two-steps process: (a) for taxpayers with revenues exceeding EUR 400,000 as from July 1, 2019; (b) for tax payers with revenues lower than EUR 400,000, the obligation will start from January 1, 2020.

⁹⁹ Italian Revenue Agency Resolution No.1, of January 10, 2013, has specified that continuous numbering can start from the number following the last invoice issued in year 2012 or can continue by calendar year, as guaranteed by the simultaneous presence in the document of the date (obligatory element in accordance with Article 21 of Presidential Decree No. 633/1972).

¹⁰⁰ In the case of a taxable person established in another Member State of the European Union, the VAT identification number assigned by the Member State of establishment must be indicated. If the buyer does not hold a VAT number, the social security number shall be disclosed.

of goods or services transferred; (g) fees related to other discounted goods; (h) VAT rate and amount of tax; (i) annotation that the same is issued by either the buyer or a third party.

Furthermore, Article 21, subparagraph 3, Presidential Decree n.633/72 gives the issuer the obligation to ensure compliance with certain specific requirements as soon as the invoice is issued up to ten years¹⁰¹. The conditions that the Decree points out towards making all invoices legally valid, are the authenticity of the origin, the integrity of the content and the readability of the invoice. Although the provision refers to both invoice formats, it is easy to immediately understand that we are dealing with a merely formal equality, since, due to the nature of the paper invoice, any alteration would be evident, while a modification on an electronic file would not leave any trace. It follows that, while for the paper invoice the observance of the three principles does not involve particular charges, for the electronic invoice, it is generally necessary to adopt technological devices and measures which will make it un-editable. The need to guarantee the authenticity of the origin of the invoice requires the operator to adopt procedures that allow him to demonstrate with certainty the identity of the issuer. The Explanatory Notes to Directive 2010/45/EU specify that the guarantee is mandatory for both the taxable supplier and the purchaser. With "content integrity", it is referring to the fact that the contents of the invoice cannot be altered or modified, even if the relative format is converted into others (for example from MS word to XML). The use of different formats, on the condition that the integrity of the document is guaranteed, allows

¹⁰¹ Accounting records keeping is regulated in the Civil Code by Art. 2220, according to which accounting records must be kept for 10 years from the date of the last registration, sale and purchase invoices, letters and telegrams sent and received. This principle has also been taken over by the Taxpayers' Statute (Art.8, subparagraph 5, Law No. 212/2000), which states that keeping accounting records obligation and documents cannot exceed the term of ten years from their shaping and submission. It could be deduced that, after 10 years, the documents can be destroyed but if there is a tax assessment procedure in place, the accounting records must be kept at least until the investigations relating to the corresponding tax period have been completed. (Art. 22, subparagraph 2, Presidential Decree No. 633/1972). However, the Association of Chartered Accountants with the rule of conduct n. 200 has stated that the tax payer is not obliged to possess the documentation beyond the established terms following an assessment. The "postponed" assessment meets a limit within the period set out by Article 432 of Presidential Decree 600/1973, as amended by article 1, subparagraph 131, Law No. 208/2015 for assessment notices relating to the tax period ongoing at the 31 December 2016 and subsequent periods, which requires that the assessment notices must be notified "on pain of decadence" by 31 December of the fifth year following the one in which the declaration is presented, or within the seventh year following in case of failure to present the declaration. This is the term within which the tax payer must be able to prove the correctness of his declaration, through all the necessary and appropriate documentation.

the invoice recipient to present the data in a different way, to adapt them to their computer system. The Explanatory Notes specify the mandatory nature of the requirement both with regard to the supplier/lender and the transferee/buyer, independently of one another. The last requirement imposed by law on electronic invoices is that of "legibility" in the sense that the invoice and its data must be made readily available, even after the conversion process, in an on-screen human-readable form¹⁰² or by printing; moreover, it must be possible to verify that the information of the original electronic file has not been altered with respect to that of the document readable presented during tax assessments. The Circular n.18/E/2014 clarifies that the invoice can be made legible even only when access, inspection or verification by the investigating bodies is asked for, since the legislator, as shown in the Explanatory Notes to Directive n. 2010/45/EU, it only prescribes the obligation to equip the instrumentation to make the format understandable. The new regulation proves more flexible, compared to the previous one, with regard to the ways in which the taxable persons can certify the presence of the aforementioned requirements; in fact, while the previous regulation listed an exhaustive series of technological instruments usable for the aforementioned purposes, the new Article 233 of VAT Directive allows a wider range of possibilities to be identified, mainly identifying the following alternatives: (a) the advanced electronic signature (qualified signature or digital signature), an instrument that allows the identification of the signatory subject and, at the same time, guarantees the unbreakable link with the data shown on the invoice at that precise moment; (b) the electronic transmission of data (or Electronic Data Interchange - EDI), an instrument that allows two subjects, using different technological standards, to exchange information entrusted to a third party (service provider) that converts them into a common language ensuring authenticity and integrity; (c) the adoption of management controls which ensure a reliable audit trail between an invoice and a supply of goods or a provision of services. Directive

¹⁰² Although the principle has been incorporated into Article 233 of the VAT Directive, which governs both the paper invoice and the electronic invoice, the reading of the Explanatory Notes lets know that the principle has been embedded with specific reference to electronic bills, given that a paper invoice is, by its nature, produced in a legible form for human people.

2010/45/EU suggests the use of a management control system¹⁰³ to establish a reliable audit trail¹⁰⁴ between invoices and operations, as a tool to demonstrate the authenticity and integrity of invoices¹⁰⁵.

2.2.2. The time of invoice emission

Article 21 of the Presidential Decree n. 633 of 1972 establishes that the invoice is considered issued upon delivery, dispatch, transmission or making available to the transferee and it represents that administrative document capable of portray the execution of a service or the sale and delivery of goods¹⁰⁶.

The fourth subparagraph establishes that the invoice is issued when the transaction is carried out: (a) at the time of stipulation of the deed from which the change of ownership effect derives if it concerns immovable properties¹⁰⁷; (b) at the time of delivery or shipment if it relates to movable properties¹⁰⁸; (c) upon payment of charges for periodic or continuous sale of goods within a supply contract¹⁰⁹; (d)

¹⁰³ In the Explanatory Notes, it is defined as «*the process by which a taxable person has created, implemented and kept up to date a reasonable level of assurance on the identity of the supplier or issuer of the invoice (authenticity of the origin), that the VAT content has not been altered (integrity of the content) and the legibility of the invoice from the moment of issue until the end of the storage period*».

¹⁰⁴ The reliable audit trail, always according to the Explanatory Notes, can be defined as «*a documented flow of a transaction from initiation, the source document such as a purchase order, to completion, such as the final recording in the annual accounts, and vice versa, that provides links between the various documents in the process. An audit trail includes source documents, processed transactions and references to the link between the two*».

¹⁰⁵ Article 3 of Prime Ministerial Decree of 13 November 2014 set the integrity principle characteristics and those making invoices un-editable, which can be ascertained by: (a) in the case of drafting through the use of software tools from: (1) use of electronic signature; (2) use of the time stamp; (3) transfer to third parties with certified e-mail; (4) storage of documents concerning economic operations in the management control system; (5) documents transfer in a digitized storage system; (b) in the case of electronically or on computer support receipt and acquisition of IT documents, by storing the documents in a management control system that ensures the inalterability of the invoice; (c) in the case of document computer recording, by software system protection measures to ensure the integrity of the database with the simultaneous generation and storage of system logs.

¹⁰⁶ However, the invoice is not a probative element. With the Sentence of 12/01/2016 No. 299, the Court of Cassation has expressed on the nature and the probative value of the commercial invoice, in a judgment in which the existence of a credit was discussed, claimed by a company to a private individual, for whom he had performed services. Judges, confirming a consolidated orientation, affirmed that the commercial invoice, having regard to its unilateral formation and the function of documenting elements related to the execution of the contract, is part of the legal acts with a participatory content, consisting in the declaration of facts addressed to the other party concerning a relationship already constituted, with the consequences that, where the relationship is contested between the parties, the invoice itself cannot constitute specific evidence of the supply of goods or performing of services, but can represent a clue at most.

¹⁰⁷ Art. 6, Presidential Decree No. 633/1972.

¹⁰⁸ See Note 101.

¹⁰⁹ See Note 101.

upon payment of the fee for the provision of services¹¹⁰. The same article, however, identifies a series of exceptions to the general provision that take into account the particular nature and the operations execution arrangements. In particular, it provides that an invoice may be issued detailing the operations performed or the goods sold, by the fifteenth day of the month following the one in which the shipment or delivery is made, for goods whose delivery is proven by the shipping document¹¹¹.

As regards the provision of services, for which the legislation establishes that they can be identified by means of suitable documentation¹¹², the Revenue Agency has clarified, with circular 18/E/2014, that the National Legislator, as the European one, does not impose specific documentary obligations relevant for tax purposes. In order to make the service provision identifiable, the tax payer may use the commercial documentation produced and stored (i.e. the receipt of the price paid, the contract, professional relations) from which the performance must be clearly identified. To this end, the deferred invoice may contain, in place of the details of the operations performed, also only the indication of the date and number of the shipping document.

For services rendered to entities established in another Member State of the European Union that are not subject to tax, the invoice shall be issued no later than the fifteenth day of the month following the one in which the transaction was carried out. For services provided by or received from a person established outside the European Union, the invoice can always be issued by the fifteenth day of the month following the relevant month.

2.2.2.1. Problems associated with issuing terms and execution of economic operations

The new electronic invoicing process determines its effects also on the tax documents accounting methods and declines precise timing regarding VAT

¹¹⁰ Art. 3, subparagraph 3, Presidential Decree No. 633/1972.

¹¹¹ It is the event of the deferred invoice.

¹¹² Art. 21, subparagraph 4, Presidential Decree No. 633/1972.

collection and the exercise of the tax deduction. The deduction mechanism guarantees the principle of tax neutrality on which the VAT system is based, which, as required by Article 1, subparagraph 2, of Directive n. 2006/112/EC, must be applied until the stage of final consumption of goods and services purchased. Article 167 provides that the right to deduct arises when the deductible tax becomes chargeable, that is, when the necessary legal conditions are fulfilled (i.e. the tax chargeable event) so that the tax authorities can enforce the right to the tax payment (i.e. chargeability of VAT). With regard to the period within which the taxable person may exercise the right to tax deduction, according to Article 179 of the VAT Directive, the taxpayer deducts globally, subtracting from the amount of tax due for a specific tax period the amount of VAT for which the right to deduct arose in the same time period¹¹³.

The matter of "timely" issuing takes on delicate edges in consideration of the particular characteristics of the electronic invoicing process, thanks to which any late transmission of the e-bill can be documented with certainty. Non-timely issue would result in the application of the sanctions referred to in Article 6 of Legislative Decree n. 471/97¹¹⁴.

Actually, some problems could occur working with the transmission process through the interchange system. Operationally, the following two situations may occur: (a) after issuing and sending to the interchange system, the invoice is accepted by the system and delivered to the recipient. In this circumstance, the bill shall be regarded as regularly and correctly issued; (b) the electronic invoice is discarded by the interchange system, thus creating possible operational problems related to the transmission obligation by midnight on the same day the invoice is issued and the operations involved in the documentation are carried out. The

¹¹³ The judgment of the Court of Justice of the European Union of 21 February 2006 in the proceeding C-419/02 gave clarity to the chargeability of some payments made before the execution of the operation. According to the Art. 10, subparagraph 1 of the VI Council Directive 17.05.1977, No. 388 CEE, the tax becomes chargeable upon the transfer of goods or the provision of services. By way of derogation from this rule, the second subparagraph provides that in the case of payment of advances or instalments prior to the sale or provision of services, the tax becomes payable when the payment occurs, up to the amount received. The latter provision, derogating from the general principle, has considered that VAT is payable in the case of instalments only when all the qualifying elements of the future assignment has already been identified. Therefore, VAT is not payable on instalments whenever goods are identified in a generic way in a list that can be modified at any time by mutual agreement between the buyer and the seller.

¹¹⁴ See above.

notification of rejection received and generated automatically by the interchange system is delivered to the seller when the e-file checks made by the system have not been exceeded, due to errors or missed data. In such a case, the electronic invoice is considered not issued and the transferor, if the document had already been recorded, must make an accounting variation valid only for internal purposes, without issuing a variation note to the interchange system.

In this sense, considering that the electronic invoice is issued at the time of delivery, dispatch, transmission or making available to the purchaser (as defined in article 21, subparagraph 1, of Presidential Decree 633 of 1972), it is not inconceivable that an issuance process, timely initiated, will end after 24 hours on the same day. Precisely because of this possibility, also considering the checks that the interchange system will operate, as well as the operational variables related to the sending/receiving channels, the Revenue Agency has ordered, in the provision of 30/04/2018 n. 89757, that the date of the document must be indicated in the "Data" field of the "General Data" section of the electronic invoice file. The latter shall be regarded correctly issued if the exchange system has delivered to the transmitting subject the delivery receipt or the delivering impossibility receipt belatedly. In other words, when invoices are promptly sent to the interchange system, the processing times (i.e. delivery/making available to the transferee/purchaser) become marginal, assuming importance just the setting-up date and contextual sending to the interchange system. However, during the first application of the new provisions, considering also the necessary technological adaptation required to the audience of involved subjects and the related organizational difficulties, it is believed that the e-file sent with a minimum delay, in any case such as not to affect periodic VAT payment and clearance, constitutes an infringement that is not punishable pursuant to Article 6, subparagraph 5-bis, of the Legislative Decree 18 December 1997, n. 472¹¹⁵.

Recently, Decree Law 119/18 provided that the invoice is issued within ten days from the execution of the transaction, but also that the invoice should contain the date on which the transfer of goods or the provision of services is carried out or

¹¹⁵ Revenue Agency Circular No. 89757 of 30.04.2018.

the date on which the payment has taken place, as long as this date is different from the one of the invoice issuing.

That allows the interpretation that, in adherence to the definition of the electronic invoice which shall be regarded as valid only when accepted by the interchange system, the date of issue is that in which the transmission takes place. This materially means that the date of chargeability, which could be different from the one shown in the "operation date" field, but very important because it will define the period to which the VAT debt tax must compete, coincide with that of issue and acceptance by the interchange system. Therefore, from this recent provision it emerges that the taxpayer can issue an invoice also during the first ten days of the following month, similarly to the deferred invoice, since the latter will be part of the deduction period of the previous month. Furthermore, at time of invoices recording, the invoice date will become a very insignificant indication, because importance must be given to the chargeability date.

On the side of the transferee/purchaser, the time from which the deadlines for VAT deductibility shall take effect coincide instead with either the date of the receipt attested by the telematic channels or with the date of taking view of the electronic invoice in the reserved area of the Revenue Agency website, where the invoice will be files in the event of non-delivery. According to the clarifications provided by the Revenue Agency, the starting date of the term for the exercise of VAT deduction must be identified when the buyer has the double condition: (a) of VAT chargeability, and (b) of the possession and availability of the invoice in accordance with the provisions of Article 21 of the Presidential Decree n. 633/72. In the context of electronic invoicing, the formal requirement for the possession of the invoice must be verified on the basis of the date attested by the electronic receipt or by the one of taking view. According to the Decree n. 119/18, within the term of the VAT settlement it is also possible to exercise the right to VAT deductibility relating to the purchase documents received and noted by the 15th of the month following the one in which the operation was carried out, except for purchase documents relating to transactions carried out in the previous year.

In this regard, the sentence of 29 April 2004, C-152/02, in which the Court of Justice

of the European Union, in a case in which it had to establish whether a taxable person could exercise the right of deductibility only with reference to the calendar year in which the invoice was received, or if rather the right should be exercised, even with retroactive effect, for the calendar year in which the same arose. The judges expressed their opinion that, in addition to the substantial assumption of the operation, the formal assumption of possession of the purchase invoice should coexist. It is from this moment that the taxable person can perform, after recording the invoice according to the procedures set forth in Art. 25, first subparagraph of the Presidential Decree n. 633 of 1972, the VAT deduction with reference to purchases of goods and services. With electronic invoicing, the taxpayer may make VAT deductible whether purchases invoices are received before the tenth day following the deductible period, since, following the Court's sentence above, the "date of possession" must not be matched with the *dies a quo* for the exercise of the deduction: the only *dies a quo* is that of the date of transmission to the interchange system and, therefore, possession is merely a condition and not a requirement.

As regards deferred invoicing, the issuing rules envisaged to date do not change and, therefore, the document must not be issued after the fifteenth day of the month following the one in which the transaction is carried out and the related VAT is due.

2.2.3. The XML format of the electronic invoice

The electronic invoice is the electronic document that transits through the interchange system, consisting of a file in XML format (eXtensible Markup Language)¹¹⁶ that must contain some essential information to correctly be sent to the recipient, i.e. the identification code for Public Administrations or the recipient code for documents issued to other economic operators (B2B). The XML format is

¹¹⁶ EXtensible Markup Language is a meta-language for defining markup languages, i.e. a marker language based on a syntactic mechanism to define and control the meaning of the elements contained in a document or in a text.

a flexible and particularly effective language for sharing data and information between different systems. It allows to exchange information between multiple software terminals, generally based on the HTTP protocol¹¹⁷. An XML file can be compared to a text file, but written in compliance with specific IT rules. The text within an XML file is enclosed within specific tags, which are nothing more than strings of letters and numbers defined in brackets "< >", within which the commands are specified. The language technology allows to accurately describe any type of information that is organized in a hierarchical structure. The text as reproduced in the file, must be translated through software or computer media in order to make it readable to the human eye.

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<p:FatturaElettronica xmlns:ds="http://www.w3.org/2000/09/xmldsig#" xmlns:p="http://ivaservizi.agenziaentrate.gov.it/docs/xsd/fatture/v1.2"
instance" versione="FPA12" xsi:schemaLocation="http://ivaservizi.agenziaentrate.gov.it/docs/xsd/fatture/v1.2
http://www.fatturapa.gov.it/export/fatturazione/sdi/fatturapa/v1.2/Schema_del_file_xml_FatturaPA_versione_1.2.xsd">
  <FatturaElettronicaHeader>
    <DatiTrasmissione>
      <IdTrasmittente>
        <IdPaese>IT</IdPaese>
        <IdCodice>01234567890</IdCodice>
      </IdTrasmittente>
      <ProgressivoInvio>00001</ProgressivoInvio>
      <FormatoTrasmissione>FPA12</FormatoTrasmissione>
      <CodiceDestinatario>AAAAAA</CodiceDestinatario>
    </DatiTrasmissione>
    <CedentePrestatore>
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        </IdFiscaleIVA>
        <Anagrafica>
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        </Anagrafica>
        <RegimeFiscale>RF19</RegimeFiscale>
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        <CAP>07100</CAP>
        <Comune>SASSARI</Comune>
      </Sede>
    </CedentePrestatore>
  </FatturaElettronicaHeader>
</p>

```

Fig. 1. Example of electronic invoice in XML format¹¹⁸

The drafting of the e-file must comply with the technical specifications set out in Annex A of the provision of the Revenue Agency of 30 April 2018¹¹⁹ for those documents issued in relation to B2B operations and those approved in Ministerial Decree n. 55/2013 for those files to be issued to Public Administrations. The file thus produced, after being saved, must be obligatorily signed for all invoices made in the case of operations with Public Administrations, while it is still an option for

¹¹⁷ The HTTP protocol (HyperText Transfer Protocol) functions as a request-response protocol within the client-server architecture. A classic example of this is that of a web browser, which acts as a client (client), on our computer while an application (a software, a digital document, etc.) available on another computer connected to the network and host a web resource, acts as a server.

¹¹⁸ Source: <https://www.fatturapa.gov.it/export/fatturazione/it/a-3.htm>

¹¹⁹ The Revenue Agency has published version 1.1. of the technical specifications updated to June 22, 2018.

B2B and B2C invoices. XML files related to B2B invoices, do not necessarily require electronic signature¹²⁰ and can be sent to the interchange system without a signature. According to the specifications in force since July 2018, notice messages received for the e-files transmission contain some hashes calculated by the interchange system, which technically justifies removing this obligation while still ensuring the file cannot be changed once it has been transmitted.

In relation to the conservation process, it can be considered an electronic document format under the Prime Minister's Decree 13 November 2014, Article 3, subparagraph 4, letter e) or a document drawn up by the use of special software tools that takes on the characteristics of immutability and integrity by pouring into a preservation system. Ultimately, it is not necessary to digitally sign electronic invoices to put them in storage, which is the case for analogue documents (Article 3, subparagraph 1, letter b)).

2.2.4. Simplified invoice

In the body of the VAT Decree, Article 21-bis was added, which regulates the simplified invoice, provided for in Articles 220-bis, 226-ter and 238 of Directive 2006/112/EC, amended by Directive 2010/45/EU and acknowledged by Italian Law by Article 1, subparagraph 325, letter e) of Law n. 228/2012. The most significant simplification consists in the possibility of issuing a document containing a reduced number of information compared to those ordinarily prescribed by Article 21 of the Presidential Decree n. 633/1972. In particular, the possibility of (a) reporting only

¹²⁰ On the matter of electronic signatures, the Prime Ministerial Decree of 22.2.2013 was published in implementation of the Digital Administration Code (CAD). It dictates the technical rules for the four different types of electronic signature provided by the Digital Administration Code, i.e. the pure electronic signature, the advanced electronic signature, the qualified electronic signature and the digital signature. A pure and simple electronic signature means a set of data in electronic form, attached or connected, which is associated with other electronic data. With advanced electronic signature, on the other hand, it is always referring to a set of electronic data attached or connected to an IT document that allows the identification of the signer of the document and guarantees the univocal connection to the latter: in this case, the signature validation data are created via means by which the signer can maintain exclusive control, in such a way as to allow for detecting if information has been subsequently modified. A qualified electronic signature means a particular type of advanced electronic signature, based on a qualified certificate and created using a secure device. Finally, a digital signature is defined as a particular type of advanced electronic signature based on a qualified certificate and on a system of cryptographic keys, a public and a private one, related to each other, which allows the owner, through the private key, and the recipient the public key, in order to verify at any time the origin and integrity of an IT document or a set of IT documents.

the VAT number or the social security number of the customer; (b) reporting the total gross amount indicating only the applicable VAT rate; (c) of indicating in a more general way, the subject of the transaction. The simplified invoice can be issued only when it appears to be a total amount not exceeding EUR 100. The simplicity of filling out the simplified e-file is reflected in the limited number of fields to be filled in the document track. Unlike the ordinary e-invoice, for example, the field 2.2.1.16 <AltriDatiGestionali> belonging to the <DatiBeniServizi> block is not present. Likewise, other fields are not present (cash, withholding tax, DDT, etc.). Otherwise, there is a section where you can enter the references of the adjusted invoice for those issued pursuant to Article 26 of Presidential Decree n. 633/72.

2.3. E-billing process

Electronic transmission is the ordinary form of sending invoices issued in XML format. As foreseen by the Art. 1, subparagraph 211 of the Law n. 244/2007 the transmission of electronic invoices to Public Administrations, and according to Law n. 205/2017 with regard to the other economic operators (B2B & B2C), must take place through the interchange system (SDI), entrusted by the Ministry of Economy and Finance to the Revenue Agency and to Sogei (Società Generale d'Informatica S.p.A.). The interchange system has no administrative role and does not perform tasks related to invoices archiving and storage, but it is an information system to support the process of receiving and subsequently forwarding electronic invoices to the recipient, as well as managing data in aggregate form and information flows also for the purposes of their integration into public finance monitoring systems. The operating modes of the interchange system have been defined with the Ministerial Decree n. 55 of 3 April 2013.

The procedural flow of electronic invoicing via the interchange system can be summarized in the following phases¹²¹:

¹²¹ Santangelo N., "Guida alla fatturazione elettronica tra privati", Santarcangelo di Romagna, 2018.

- (a) Generation of electronic invoice in XML format with the inclusion of the necessary data, such as the recipient's code or certified e-mail address;
- (b) XML invoice file needs to be electronically signed by the issuer. An important clarification is to be made on the subject required to sign in the event that the invoice is issued by a third party or by the customer on behalf of the supplier. The circular of the Revenue Agency n. 18/E of June 24, 2014, distinguishes according to whether the transferor sends a final document already prepared or a simple flow of data to be aggregated for the purpose of invoice to be drawn up. In the first case, the issuer is always the originator and the electronic signature must necessarily be of issuer's own responsibility. In the second case, the issuer is instead the customer or the third party, who must then electronically sign. If a third party issues the document, the fields <TerzoIntermediarioOSoggettoEmittente> must be completed;
- (c) The XML file (appropriately prepared, nominated and signed) can be sent to the Interchange System by the transmitting subject, or by a third party to whom the transmission is delegated, through various transmission channels such as certified e-mail or the application that provides the same SDI and allows to send via a web interface or the SDICoop, SDIFTP and SPCoop transmission services;
- (d) The Interchange System carries out both on invoice files and on archive files checks aimed at guaranteeing correct forwarding to the recipient. In case of errors found during the checks, every error is identified by a pair: code and description. The error code is provided in the notification of rejection sent to the sender of the invoice file for each file sent. With a negative result, the invoice will not be sent to the recipient;
- (e) The electronic invoice is sent to the recipient at the electronic address which every subject obliged to electronic invoicing has to provide for to the Revenue Agency website, indicated on the invoice in the <CodiceDestinatario> or <IndirizzoPEC> field. In the event that the

- document is issued to a subject who has no VAT registration, the same is made available in the online reserved area of the Revenue Agency website;
- (f) The XML file is received by the recipient, who may also be a third subject. If the interchange system fails to forward the document, it will send the transmitter a non-delivery notification;
 - (g) Dispatch of the delivery receipt by the Interchange System to the transmitter as a proof of being able the receiver to view the document;
 - (h) Invoices and delivery receipts keeping and conservation through the Revenue Agency portal or third-party software service provider.

2.3.1. Transmission and receiving channels

The provision of the Revenue Agency dated 30 April 2018 specified the methods by which the invoices can be sent and received electronically. The electronic invoicing process requires that the person obliged to issue invoices, transmit the same in XML format to the interchange system, directly or through a third party; and that the recipient subject receives the same document from the SDI in the way chosen upfront.

The channels that can be used to send and receive electronic invoices to/from the Interchange System are the same used in the relationships with the Public Administration, and can be listed as follows:

- (a) Electronic certified email: if the transmitting party intends to use this tool for sending and receiving electronic invoices, it is necessary that the operator of the same is included in the public directory managed by the "*Agenzia per l'Italia Digitale*"¹²². The use of certified e-mail ensures the identification of the transmitting subject and, therefore, does not presuppose any accreditation to the Interchange System. XML files must be sent as an attachment to the email which must not exceed 30 MB (message including attachments) and 5 MB for each single file of invoices¹²³. The first

¹²² Art. 114, Presidential Decree No. 68/2005.

¹²³ Annex A, provision of the Revenue Agency dated 30 April 2018.

time the transmitting party sends an invoice via certified e-mail, it must use the address "*sdi01@pec.fatturapa.it*" and the Interchange System, with the first reply message, will communicate the e-mail address for subsequent mailings.

- (b) SdICOOP Service: it consists of an application cooperation system on the Internet accessible through the https protocol. For the use of this channel, it is necessary the accreditation to the interchange system that allows to set up and the technical rules of dialogue between the IT infrastructure of the transmitting subject and the Interchange System. The Interchange System activates and associates the seven-digit recipient code to the telematic channel started.
- (c) SdIFTP Service: XML files, that are transmitted within this closed loop system based on FTP protocol, are previously encrypted. The telematic channel between remote terminals also needs a specific service agreement and accreditation with the Interchange System with the aim to define the communication rules between the same.
- (d) Via the web: invoices and XML files can be created and sent through the applications made available by the Revenue Agency which interface with the Interchange System¹²⁴.

It is therefore clear that both issuers and recipients must be equipped with IT tools to manage electronic invoicing and choose the telematic channel to be in line with the new electronic invoicing obligations. Those who opt for sending and receiving by certified e-mail will not have to proceed with the accreditation to the Interchange System, but will still be required to communicate the chosen telematic address for receiving invoice files filling the necessary information in the gaps of Agency Revenue website¹²⁵. In this way, electronic invoices will always be delivered to the registered electronic address. If, due to technical reasons not attributable to

¹²⁴ Access is subject to the possession of Entratel or Fisconline service user's credentials possession.

¹²⁵ Available at:

<http://www.agenziaentrate.gov.it/wps/content/nsilib/nsi/schede/comunicazioni/fatture+e+corrispettivi/ac+c+servizio+fatture+e+corrispettivi>

the Interchange System, the delivery is not possible, the system makes the invoices available to the transferee in its reserved area of the Revenue Agency website.

In the event that the transferee has not registered its electronic address on the website of the Revenue Agency, the invoice will be delivered to the address indicated in the field of the invoice <Codice Destinatario> or <PECDestinatario>. The first, which may contain seven alphanumeric characters and it is issued following accreditation to the Interchange System after signing the service code, must be filled in by entering the code communicated by the client, as well as the field of certified e-mail must be filled with the correct e-mail address communicated by the customer if the latter had not opted for the accreditation service (a conventional recipient code <0000000> is entered).

The exempted entities¹²⁶ from the obligation of electronic invoicing will still be required to receive invoices in electronic format, leaning on the online services of the Revenue Agency, in fact the Interchange System delivers the electronic invoice to the transferee by making it available in one's own reserved area, or communicating the certified e-mail address.

2.3.2. Notice of rejection, failure delivery and invoice integration management

In addition to receiving e-invoices from the issuer and forwarding it to the recipient, the Interchange System makes available to the supplier notifications regarding the results of the transmission, issued through the same channel chosen by the economic operator for the electronic invoicing flow. Specifically, once the electronic invoice is received, the channel immediately provides confirmation of the file receipt and then performs a series of checks in order to verify e-invoice completeness and correctness, as it will be better explained in the following

¹²⁶ Subjects that fall under the advantage regime pursuant to Art. 27, subparagraphs 1 and 2, of the Law Decree July 6, 2011, No. 98, amended by the Law July 15, 2011, n.111; or that they apply the flat-rate regime referred to in Article 1, subparagraphs 54 to 89, of Law n. 190 of December 23, 2014; or the agricultural producers referred to in art. 34, subparagraph 6, of the Presidential Decree of 26 October 1972, No.633. According to the Budget Law 2019 new text, these are joined by doctors, pharmacists and health professionals for the only operations that are the subject of health data communication and sports associations with annual revenues of up to EUR 65,000.

subparagraph.

Once the invoice is issued, essentially two scenarios lie ahead: (a) successful checks and forwarding of the e-file to the recipient or, (b) SDI examination followed by monitoring activity failure giving rise to the document rejection.

- (a) In the first case, a receipt is returned to the transmitting party in which both the success of the control process and the e-invoice delivery is documented. In the delivery receipt, an indication is given of both the date on which the Interchange System received the electronic invoice and the date on which the latter in turn delivered the e-file to the recipient. In the event that, for reasons not attributable to the System, transmission to the recipient is not possible¹²⁷, a receipt of delivery failure is sent to the transmitting subject with which the Interchange System communicates to have made the invoice available into the transferee's reserved area. It will be transmitting party's responsibility to warn the recipient that the invoice has been regularly issued and available in the reserved area of the Revenue Agency website: this communication can also be made by sending an electronic or analogical copy of the electronic invoice.
- (b) Otherwise, if the aforementioned checks were not overcome, within a period of five days a disclaimer will be sent to the transmitting party for the single invoice or the entire archive file issued. It is worth remembering that invoices are not considered regularly issued and therefore do not give rise to the right to VAT deduction as provided for by Articles 19 and 19-bis of the Presidential Decree n. 633/1972. The Financial Administration with the Circular n. 13/2018 clarified that the issuer will have five days available to proceed with a new transmission "preferably" with the date and number of the original document, without incurring any violations. In the same information Circular, the Revenue Agency reiterates that if the seller has recorded a document in the accounts subsequently the SDI rejected, the accounting variation must have internal effectiveness only, as no issue and

¹²⁷ Main causes can be ascribed to: failure to configure the telematic channel by the receiving party or busy certified e-mail box.

transmission of a variation note to the System is required. The Agency suggests to issue a new invoice with a different number and date than those of the discarded document, from which it may prove to be linked to the previous one, though, or to again compile and send a new invoice with the same characteristics as the previous hypothesis which is distinguished by a specific numbering, thanks to which it is possible to highlight the rectifying nature of the document. In this circumstance it will be essential to establish a special sectional accounting register.

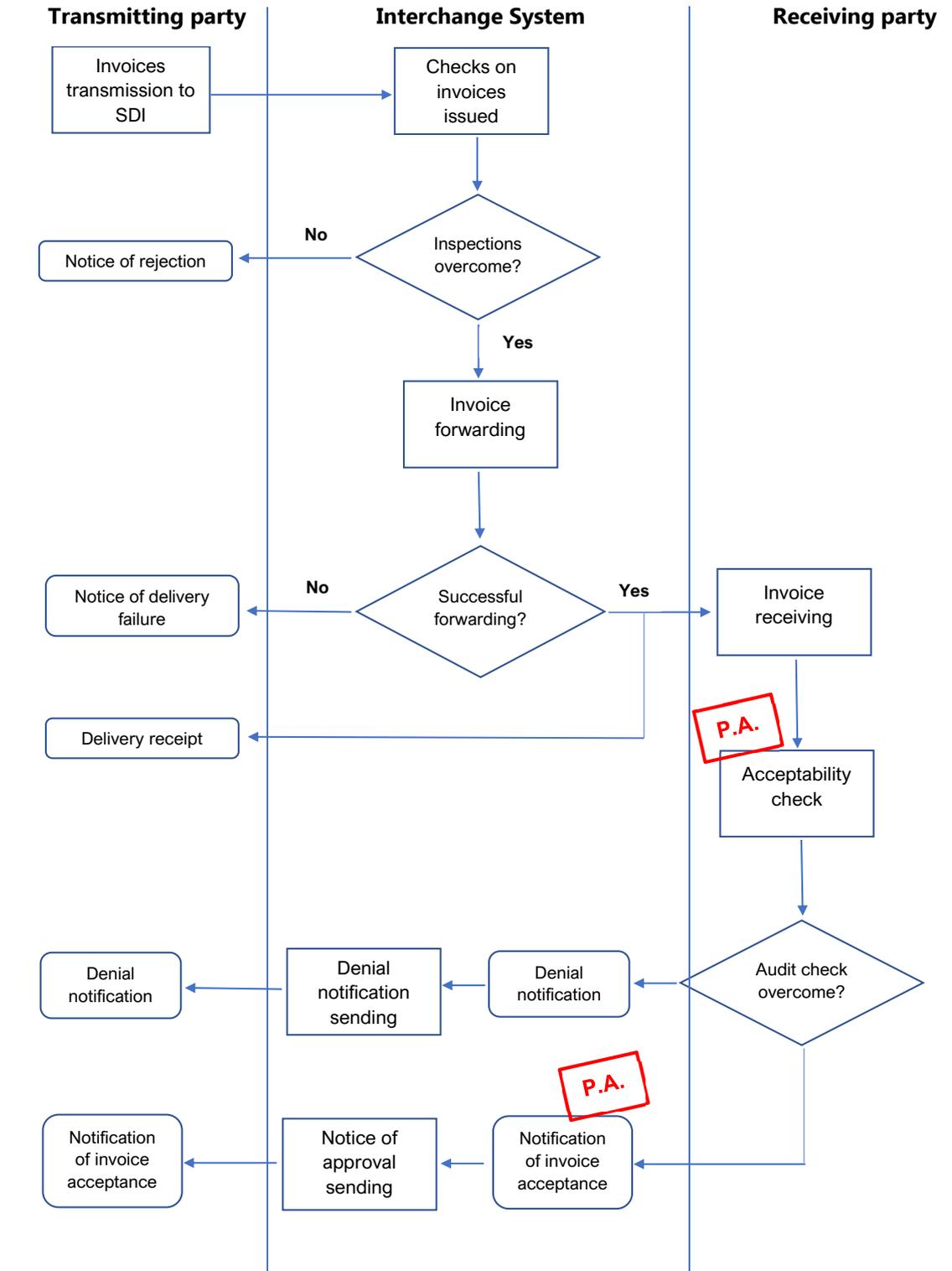


Fig.2 E-invoicing procedural flow depiction

2.3.3. Checks operated by the Interchange System

The Interchange System, for each electronic invoice or archive file of invoices correctly received, makes a series of specific checks before sending the document to the recipient, upon which it accepts or discards the file, by issuing a receipt to the transferor within 5 days¹²⁸. In the event that the invoice file is electronically signed, the Interchange System will check the validity of the signing certificate. In the case of a negative and unsuccessful result, the file is discarded and the receipt is sent, as if there were errors in compiling the invoice file. Again, the electronic invoice or batch of invoices in the file dropped by the SDI be deemed not issued. Appendix 1 of Annex A of the provision of 30 April 2018 shows that the types of inspections carried out are aimed at verifying: (a) file uniqueness and nomenclature: the check is performed in order to prevent sending files already transmitted by means of a check on the file hash name and if this is, at the same time, compliant with the provisions of the aforementioned Annex A. The notice of rejection will show the code "00001" if the file name is not valid or the code "00002" if the name had already been used previously. The name of the file must contain, in order: the country code, the unique identifier code of the transmitting subject, the univocal progressive code of the five-digit file that allows to differentiate the files sent by the same subject to the Interchange System¹²⁹. (b) file size: the System verifies that the received file does not exceed the allowed dimensional limits in relation to the type of transmission channel chosen. In the event of this error, the notice of rejection will show the code "00003". (c) document completeness, integrity and validity: these checks are carried out to ascertain the presence and validity of the data necessary for the correct file sending and delivery to the recipient¹³⁰, to prevent incorrect and non-computer processing data situations and to ensure that

¹²⁸ Revenue Agency implementing provision n. 89757/2018.

¹²⁹ For instance, file identifier number may have the following alphanumeric sequence:

→ <ITCCCAA32R21L999S_00001.xml>

¹³⁰ Particularly, checks are carried out: on the existence of the recipient code and the preferred methods communicated by the recipient on the website of the Revenue Agency with the purpose of receiving the electronic documents; on the validity of tax codes and VAT numbers relating to: the transmitting subject, the seller, the transferee or tax representative through a tax register cross-check.

the invoice received has not been changed successively electronically signing it. (d) compliance with e-invoice format requirements outlined by Annex A technical specifications and adherence between the elements laid down in the document¹³¹. The Interchange System allows for verification of the evolutionary trend of the electronic invoices management and, thanks to the data provided by the Revenue Agency updated at 31 August 2018, from a total of 55,610,395 invoice files received since the start of the year 2017 to August 2018, 94% (52,527,268) have been forwarded to the specific Public Administration Offices; 4% (2,340,000) have been issued to private entities; 1% (743,127) were discarded by the System due to the presence of various types of errors.

The following graph shows information about the distribution of errors detected by the Interchange System (and therefore caused by the transmitters) in the period between January 01, 2017 and August 31, 2018.

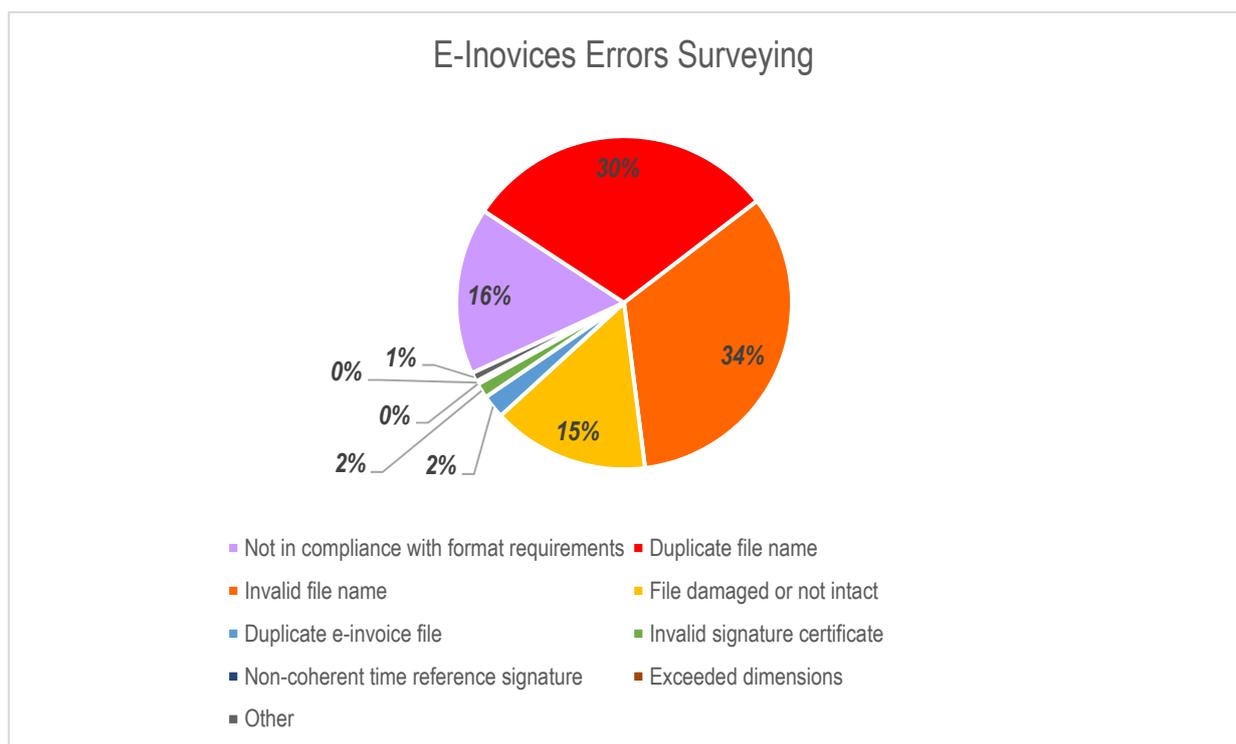


Fig. 3. E-invoices errors surveying¹³², January 2017 – August 2018

¹³¹ For instance: in the presence of a VAT rate equal to 0, the operation field is not compiled in (error code "00400"); or indication of an invoice date successive the date of receipt by the Interchange System (error code "00403"); or indication of an invoice date prior to that of the document to which the same refers (error code "00418").

¹³² Source: https://www.fatturapa.gov.it/export/fatturazione/it/numeri_sdi.htm

The most common errors relate to the name assigned to the invoice file, duplicated or invalid in 30% and 34% of cases respectively, files that do not conform to the expected format or with invalid signature, found in 16% and 15% of cases respectively. Besides not preparing the file with the right nomenclature, some issuers have committed the so-called "double click" error, which occur when the e-document is sent twice. In such circumstances, the Interchange System rejected the file because it has already been issued. The latter sent out a notice of rejection addressed to those to be included in the whole range of errors listed in the graph. Instead, the second chart shows the ever-decreasing trend of the number of rejected invoices as a percentage of the total number of documents issued to the System for the same period.

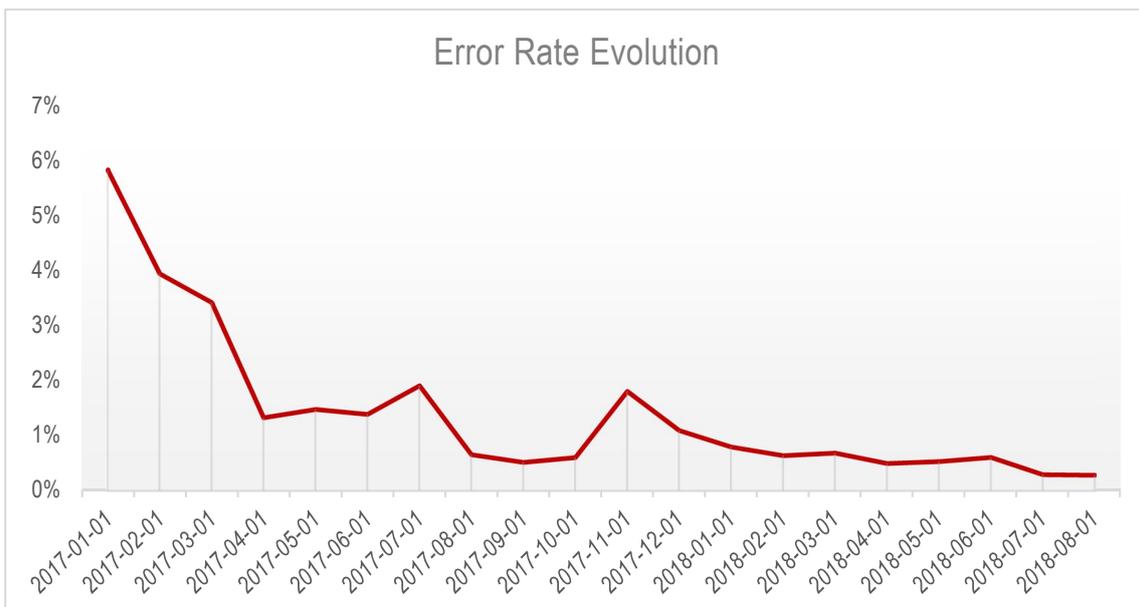


Fig. 4. E-invoices error rate trend¹³³, January 2017 – August 2018

2.4. The electronic invoice storage

The electronic invoicing process is not just about issuing and sending the XML file digitally signed to the SDI, but requires a subsequent phase of substitutive storage activity. Substitutive storage is a procedure introduced by the 2005 Digital Administration Code (CAD)¹³⁴, and concerns the theme of the legal validity of IT

¹³³ Source: see note 125.

¹³⁴ Legislative Decree 7 March 2005, No. 82.

documents over time. CAD has become the point of reference and interpretation for any IT document, even of fiscal and legal value. Over the years there have been several resolutions to simplify the operational conservation procedures. Currently, all the typical documents of the company can be brought into substitutive conservation, leaving the company the right to decide whether to destroy or even produce the hard copy. In summary, it can be asserted that the conservation process aims to make a document not alterable, authentic and intact over time. The documents produced are collected in groups, electronically and digitally signed with the time stamp apposition, the computerized evidence that makes it possible to make a temporal reference enforceable against third parties. The application of the digital signature and the time stamp and the entire preservation process are carried out by the "conservation manager¹³⁵", a figure defined in the "substitution conservation manual¹³⁶", which is responsible for ensuring the

¹³⁵ The Conservation Manager is a figure provided for by the Code of the Digital Administration, and is generally held by the managing director, the person in charge of the organization, the administrative director or a person expressly delegated. The manager organizes the activities related to the document storing process, plans the times and modalities of the operations related to the process, delegates some operations to people inside or outside the company. The process is described in detail in the conservation manual. The manager must: (a) select the format of the documents that ensure readability over time; (b) affix the digital signature on all the documents or on the digital fingerprint file certifying the correct execution of the process; (c) maintain over time the validity of the digital signature placed on the documents through the time stamp system; (d) verify, with a frequency of not more than 5 years, the actual readability of the supports produced; (e) provide for the transfer of the contents of the media in case of non-readability of one of the copies, draw up the manual of conservation that details in-house process organization of substitutive storage describing who does what and how, report what tax documents they are subjected to conservation, with which indices, how many copies of the conservation volumes are produced and where they are stored. It is possible to delegate this role to an external person, but also in this case the company cannot be held responsible for keeping its tax records. The Revenue Agency has repeatedly reiterated that the responsibility for the conservation of tax documents always remains with the company for disputes with the supervisory authorities.

¹³⁶ The processes that are implemented to proceed with the filing and substitutive preservation of documents in digital format are described in an operating document called "substitution conservation manual", which provides the description of the architectures and IT infrastructures used in the process. The legislation requires that the manual must at least indicate (a) data of the subjects who over time have assumed the responsibility of the conservation system, describing in a timely manner, in the case of delegation, the subjects, the functions and their responsibility areas; (b) the organizational structure including functions, responsibilities and obligations of the various parties involved in the conservation process; (c) the description of the types of objects subject to conservation, including the indication of the formats managed, the metadata to be associated with the different types of documents and any exceptions; (d) the description of the storage process and treatment of storage packages; (e) the export procedure from the storage system with the production of the distribution package; (f) the description of the conservation system, including all the technological, physical and logical components, appropriately documented and the management and evolution procedures of the same; (g) a description of the procedures for monitoring the functionality of the storage system and checks on the integrity of the archives with evidence of the solutions adopted in the event of anomalies; (h) description of the procedures for producing duplicates or copies; (i) the times within which the different types of documents must be discarded or transferred to conservation; (l) the modalities with which the presence of a public official is requested, also indicating which are the cases for which authority intervention is expected.

conformity of the documents stored with respect to the originals.

VAT Directive rules on invoices storage processing have not been substantially amended by the Directive n. 45/EU of 13 July 2010. However, the need for ensuring compliance with invoices authenticity, integrity and, above all, legibility principles, made some changes to Article 247 of the VAT Directive necessary. The aforementioned Article acknowledges that the Member States have freedom to define the conditions for keeping the invoices over time. Specifically, each Member State has the right to establish the timeframe during which the tax payer is obliged to keep and preserve (subparagraph 1, Article 247 of the VAT Directive); to require invoices to be kept in the same original format as they are being transmitted and to impose, in the case of electronic filing, the adherence with the principles of authenticity, integrity and legibility (subparagraph 2, Article 247 of the VAT Directive).

The Italian legislation has incorporated the indications of the VAT Directive in Article 39 of the Presidential Decree of 26 October 1972, n. 633, which establishes the obligation of electronic retention for electronic invoices, in compliance with the provisions of the Decree of the Minister of the Economy and Finances of 17 June 2014¹³⁷ adopted pursuant to Article 21, subparagraph 5, of Legislative Decree 7 March 2005, n. 82. Article 39 of the Italian VAT Decree has however specified that, for invoices merely created in electronic format, that is, IT documents that won't be in line with integrity, authenticity and legibility principles (for example files in word format or pdf), freedom is left to taxpayer to choose the mode of conservation (paper or electronic). This freedom of choice is preserved also with regard to paper invoices.

The same article, in line with what is indicated in Article 247, subparagraph 3 of the VAT Directive, gives some indications as to where the electronic invoices are stored, recognizing the possibility of electronic retention in another Member State on condition that, there is a legal instrument that regulates mutual assistance and that the subject ensures automated access to the file archive. To better clarify this principle, the Revenue Agency specified in the circular of 24 June 2014, n. 18/E that

¹³⁷ This Decree replaced the conservation rules contained in the Decree dated January 23rd 2004.

this possibility is conditional upon total compliance with the rules of keeping and conservation envisaged in Italy and that access to and control of documents to the competent authorities must be ensured at all times.

If the tax payer decides to store e-invoices through the Interchange System and the service of storing made available by the Revenue Agency, the obligation terminate automatically through the use of the online services accessible after identification with the digital identity, as envisaged by Art. 39 of the Legislative Decree 13 December 2017, n. 217, which modifies Article 2 of the Digital Administration Code¹³⁸.

The volume produced by the storing activity process must have the functions of searching and extracting information and documents and, initially¹³⁹, it was required to send to the Revenue Agency the entire archive stamp produced during the year. Thanks to the new Decree dated 17 June 2014, this communication has been eliminated and replaced with a notice to be made in the appropriate line of the income tax declaration for the specific financial year. Finally, it must be remembered that for the substitutive conservation the stamp duty is payable with a single payment within one hundred and twenty days from the end of the financial year and the conservation to be fortnightly has been extended to one year¹⁴⁰. In relation to the keeping and conservation of accounting records, it is also appropriate to recall Article 22 of the Presidential Decree dated September 29, 1973, n. 600, according to which the mandatory accounting records must be kept until the tax assessments relating to the corresponding tax period are settled, even after the deadline established by Art. 2220 of the Civil Code, which establishes a minimum period of 10 years¹⁴¹.

¹³⁸ According to the new wording of subparagraph 6-bis, Article 1 of the Legislative Decree No. 127/2015, by virtue of subparagraph 909 of the 2018 Budget Law, it was established that the electronic storing obligations set forth in Article 3 of the Decree of the Minister of Economy and Finance of 17 June 2014, are satisfied for all electronic invoices and for all IT documents transmitted via the Interchange system and stored by the Revenue Agency.

¹³⁹ Article 5, subparagraph 1, Ministerial Decree 23 January 2004.

¹⁴⁰ It must be done within 3 months from the deadline for filing the tax return.

¹⁴¹ See note 95 for a broader understanding.

Conclusion and final thoughts

From the analysis of the issue of the dematerialization of invoices, two primary concepts emerge.

The first is that dematerialization is indeed an interesting tool to respond to the various problems of the Public Administration and essential to lay the foundations for the overall implementation of an e-government and digital revolution plan in the Country's tax and legal procedures systems.

The second is that, in order to carry out dematerialization projects, it is however necessary to be able to govern organizational and, above all, technological complexity such as to make such a project a non-problem for organizations and companies, which therefore requires clear guidance and a strategy that necessarily looks to the long term. With the recent amendments¹⁴², the problem of the timely issuing of invoices during the execution of operations has been temporarily overcome by granting taxpayers a margin of ten days of document issuance and the reduction of penalties for the first six months of the year 2019. This, in fact, would have poorly been reconciled with the daily operation of each company, which would have been forced to question the bank account daily or to check the invoices received not already displayed on the last day of the month, running the risk both to incur serious penalties for failure or inadequate invoicing in the event of a delay of even one day in the transmission to the Interchange System and of losing the right to deductibility by having to include the VAT credit in the subsequent due period. If, on the one hand, the problem of deductibility has been resolved, on the other the question remains that the system and the interchange platform can check and process the invoices within the five days required, necessary to generate and issue the notification of the outcome and the receipt of delivery to the transmitting subject, the first necessary in order to regard an invoice as correctly issued.

It is clear that the obligation of electronic invoicing is part of a framework of

¹⁴² Law Decree No. 119/2018 jointly with Budget Law 2019, which reduce penalties and increase the time to legally issue invoices.

initiatives and tools designed to solve the problem of delayed payments of commercial debts by Public Administrations and tracking of all taxable transactions carried out by the various economic entities within the national territory: therefore, it is hoped that the goal of greater speed in the payments of Public Administration debt is reached together with shorter times for the accreditation of VAT refunds, which today are more than ninety days¹⁴³.

¹⁴³ With the Decree of the Ministry of Economy and Finance, dated December 22, 2017, in Article 3 of the text published in the Official Journal on January 8, modalities have been provided to reduce the timing of execution and reimbursement of VAT. Based on the changes introduced by the Decree Law No. 50/2017, made operational by the Agency with the Provision of 29 December 2017, the repayments from the tax account will be provided directly by the competent agency structure, avoiding the transition to the provincial treasuries and benefiting from a considerable saving of time.

Chapter 3

Invoices digitisation within the European and Italian VAT compliance scheme and VAT enforcement system reforms at Union level

VAT is probably the best-known tax as it is applied to the added value of each phase of production and exchange of goods and services. It is born as a European tax and its structure is essentially outlined by Community Directives. Actually, VAT came into existence under the pressure of the European unification process and was introduced into the individual Member States' laws in implementation of Community Directives adopted to harmonize the different tax systems that affected the exchange of goods and services. The process of harmonization among the different legal systems of the UE States has reached one of its highest expressions on the VAT legislation fields, which became essential because of the persistence of different systems of taxation on trade. Regulatory heterogeneity constituted a real obstacle to the creation of a single real open market, in which free circulation of goods and services and competition in exchange phases not undermined by tax obstacles can be ensured¹⁴⁴.

Although the latest political developments in the EU have somehow slowed down the process of the European integration¹⁴⁵, it may be worth recalling that in reality, in the meantime, updates to Community legislation on value added tax continue to take place. Among these, and certainly among the most interesting, are the recent developments in the field of the fight against intra-Community fraud¹⁴⁶ and

¹⁴⁴ BIZIOLI G., *"Il processo di integrazione dei principi tributari nel rapporto fra ordinamento costituzionale, comunitario e diritto internazionale"*, Padova, 2008, pp. 140-141. The Author debates on the condition of reciprocal integration of the two levels, Community-wide and National, of the tax system: on the one hand, the Community tax harmonization presupposes national tax systems, their principles and their aims. On the other hand, in defining their tax systems, Member States cannot disregard the harmonized taxes and institutions at Community level. The author stresses that the competences of the European Union are limited to the fiscal harmonization of indirect taxes.

¹⁴⁵ More than two and a half years following the outcome of the UK referendum, where the leave prevailed with 51.89% of votes, the difficulty alternating with the stalled negotiations confirms this judgment, despite the efforts of the EU institutions to trace a clear, shared and fast exit process. On the point see MARTINELLI C., (edited by), *"Il Referendum Brexit e le sue ricadute costituzionali"*, Rimini, 2017.

¹⁴⁶ In this regard, the EU Commission launched the new VAT system action plan on 4 October 2017 «to ensure it remains an asset for the future», bearing in mind that at present it is «too fragmented and too prone to fraud». As the Commission notes in its Communication COM (2017) 566, the modernization of the

those that occur in each specific Member Country, one of these is represented by making electronic invoicing compulsory for some specific economic operations. Italy ranks among the first Member Countries, after Portugal, to have made electronic invoicing mandatory beyond the scope of the B2G transactions in order to reduce evasion and the phenomenon of fraud.

The main purpose of this chapter is therefore to analyse the phenomenon of fraud which today represents, more than any other aspect of the VAT tax, the problem most felt by the Community institutions and the Member States and to investigate merits and defects of the electronic invoicing as instrument to fight against VAT evasion. It will also be the object of this chapter highlighting the issues, and those deficiencies, the current system of tax exemption is characterized by, which have rendered necessary both the whole VAT system and the taxation to destiny mechanism revision in intra-Community trade.

Established with the function of creating the right conditions for the establishment of the unitary euro market, VAT is undoubtedly an excellence in the architecture of indirect taxes and has played a very important role not only for the proper functioning of the European market but also to solve the problem of the cumulation principle¹⁴⁷ of the previous national consumption taxes.

In our legal system, VAT was introduced by Presidential Decree n. 633/1972, functional to the realization of free trade and the attainment of the aforementioned

existing VAT system will be based on gradual actions which will take into account already adopted measures [this includes the VAT digital package, structured on the provisions adopted on December 5, 2017 consisting of the 2017/2455 Directive (amending Directive 2006/112/EC and Directive 2009/132/EC concerning certain VAT obligations for the provision of services and remote sales of goods) and in EU Regulations 2017/2459 (amending the EU Regulation 282/2011 containing provisions implementing Directive 2006/112/EC on the common system of value added tax) and 2017/2454 (amending the EU Regulation 904/2010 on administrative cooperation and combating fraud in the field of value added tax)] and other measures currently under consideration, such as those concerning on the new VAT system. With the proposed directive COM (2018) 329 final, the European Commission proposes definitive technical measures to achieve a future fraud-proof EU VAT system. The package of measures adopted on 25 May 2018 substantially modifies VAT rules and should facilitate business across the EU, as it brings to an end the 25-year "transitional" VAT regime in the single market.

¹⁴⁷ The IGE tax, the Italian consumption tax abolished and replaced by VAT, was characterized as multi-phase and cumulative: this tax was applied to each exchange between companies or between companies and consumers on the full value of the asset sold; since the entire value was the tax base, the tax was applied whenever the good passed from one subject to another, thus characterizing it as cumulative. This fact was strongly discriminating, as the price of the final product varied significantly depending on the number of steps that this had undergone in its production, thus favouring vertically integrated companies, which carried out several stages of processing within it; these companies' products were therefore more appealing, to the detriment of those to whom a greater number of passages had occurred. On the point see RUSSO P., *"Manuale di diritto tributario – Parte speciale"*, Milano, 2009, p. 275.

European regulatory and political objectives. VAT is a multi-phase cumulative tax and, although it is applied to every economic transaction, it is destined to remain neutral at every stage of production or exchange prior to consumption, affecting only the final consumer. The neutrality of the tax for producers of goods and services and for traders is achieved through the compensation claim and deduction. Specifically, the economic entity is required to charge the tax on the price of the asset or the service whose property is transferred: that is the compensation claim, which finds an autonomous regulation in Art. 18 of the Presidential Decree n. 633/1972, where the National Legislator identified this right in the tax charge that the subject must carry out if it finalizes a taxable transaction against the respective transferee or buyer. Alongside this, with the deduction it is recognized to the same the right to pay to the Treasury only the difference between the debt and the amount paid to VAT on purchases of goods or services related to their economic activity. The result of the combined operation of these subjective situations is the neutrality of the tax for taxable persons¹⁴⁸. Therefore, the first subject places on the latter the tax amount relating to a given economic fact as a result of using the right to VAT reclaim, so that the person who gives birth to the taxable event actually bears the relative economic burden¹⁴⁹.

A fundamental characteristic of the value added tax is the fact that it relies on documentary profiles: sale and purchase of goods and services must be proven by valid documents, in which the transaction is described and through which VAT shall be applied. The obligation to reclaim and the right to deduct cannot be made if there is no material evidence of the economic operation. In providing for the obligation to charge VAT by way of recourse from the seller/lender, Article 18 creates an unbreakable link between this activity and invoicing: this is a link that is indirectly identified by reading the second subparagraph where the case of optional recourse is envisaged, with the consequent reference to Art. 22. The document, whether electronic or paper-based, which gives rise to the obligation to

¹⁴⁸ TESAURO F., *“Istituzioni di diritto tributario”*, Vol.2 – Parte Speciale, 11th edition, Milano, 2018, pp. 222-223.

¹⁴⁹ SALVINI L., *“Rivalsa nel diritto tributario”*, inside *Digesto delle Discipline Privatistiche*, parte commerciale, 1996, pp. 30 and following.

VAT reclaim, is represented by the invoice which provides evidence of entity's right and entitlement to claim the tax credit that is realized acting as an essential instrument for the exercise of VAT deductibility.

In this chapter it will also be evaluated the Community initiatives aimed at coordinating the investigation activity of financial administrations. As will be discussed below, the instrument chosen by the Community legislator to develop such cooperation in the field of taxation remains that of the exchange of information and mutual assistance for tax credits collection, since the administrative action remains largely a prerogative of the national tax authorities. Despite this, the persistence of the fraudulent phenomenon and the considerable dimensions that illegal trade has reached lately, reveal the insufficiency of these cooperation instruments and of the limits encountered by the same national investigation activity aimed at ascertaining and containing transnational frauds, which override the territorial jurisdiction of national tax authorities.

However, some satisfactory answers come from the most recent developments in the Community criminal law contained in the new Directive n. 2017/1371, in which the most serious forms of VAT fraud are also fully included. Moreover, the new regulations are very important because they outline VAT Community criminal protection, to which European Union financial interest is also explicitly ascribed. However, the reform also provides for the establishment of a Public European Prosecutor with the power to investigate that extends into all national laws. Thus, even if with limited effect to the most serious frauds, the possibility of criminal investigation action coordination that will be carried out directly by the new community body with the collaboration of the national authorities is also visible, and will certainly have positive repercussions also at the level of tax action.

3.1. Nature and evolution of the value added tax

With the Treaty of Rome of 25 March 1957, constitutive of the European Economic Community, the Member States shared the objective of the establishment and functioning of a common European market. This is to overcome the traditional

distinction between the national market and the foreign ones and reach a common European market as opposed to the extra-European market. The common market was therefore the original founding idea of Europe. To this end, the Treaty created the legal basis for the harmonization of national systems of indirect taxation on trade. The EEC Treaty represented the starting point for the creation of a common system of value added tax with the aim of eliminating, as much as possible, the distortions of competition created by the different tax regimes of the Member States. Harmonization was necessary to achieve the objective pursued by the European Economic Community: to create a common European market that had the characteristics of a real internal market, in which goods and services could circulate without tax obstacles. It was therefore instrumental to the realization of the market, which finally became internal in 1993. The harmonization of national systems under the provision of the EEC Treaty was therefore aimed at standardizing the national systems of indirect taxation on trade, eliminating the individual national specificities. The guiding criterion was to attribute the least possible scope of choice to the Member States, precisely to reach greater uniformity in the application in the supranational framework and thus ensure full integration of the single market. This, in order to promote the free circulation of services and goods in the area of the common market, avoiding double taxation. The harmonizing process in several legislative areas by the European Economic Community has been one of its main activities since its inception, considering that it is functional to its main objective of a single and unique common market.

This "warp-drive" reforming power towards the legislation of the various Member States has also involved the Italian tax and legal systems: the instrument used by the European institutions to harmonize the various national laws is Directive ruling, which was a normative source of primary status within the Community; each State, following the approval of one of them, is required to absorb it in its own legal system through a law of transposition and this amends and revokes the previous rules on the matter incompatible with the principles of the directive just

introduced¹⁵⁰.

In these terms, the value added tax owes therefore its existence and its diffusion mainly to the ability to offer satisfactory answers to the difficulties that had arisen with the application of the previous consumption taxes: that is, the neutrality of the tax with respect to economic choices and operations, as well as, in terms of trade with foreign countries, the ability of the tax to make it possible to identify the tax burden to be deducted in exports and the amount to be charged to incoming goods. In other words, today's VAT is therefore the result, on the one hand, of the need of the Member States to put an end to the cumulative taxes which obliged economic operators to make business organization choices that necessarily also take into account the indirect taxes provided for in the respective national laws and, on the other, to lay the foundations of the Community market through the establishment of an imposition system capable of ensuring the proper functioning of market trade and healthy competition between economic operators.

3.1.1. The value added tax in the National dimension

The introduction of Value Added Tax into the Italian tax system took place pursuant to the Community obligation of harmonizing turnover taxes, provided for by the first two VAT Directives¹⁵¹, as part of the wider project of European unification that

¹⁵⁰ The law of European delegation is one of the two instruments of adaptation to the European Union system introduced by the Law of 24 December 2012, No. 234, which has implemented a comprehensive reform of the rules governing the participation of Italy in the formation and implementation of European Union legislation and policies. The legislation regulates, as a whole, the process of Italian participation in the formation of decisions and the preparation of European Union acts and ensures compliance with obligations and the exercise of the powers deriving from Italy's membership of the European Union. A participation that is substantially consistent with Articles 11 and 117 of the Constitution, based on the principles of attribution, subsidiarity, proportionality, loyal collaboration, efficiency, transparency and democratic participation. The new Law establishes that the EU draft acts, the acts designed for their endorsement and their modifications must be transmitted to the Chambers, by the President of the Council of Ministers or by the Minister of European Affairs, at the same time as they are received. In cases of particular importance, an explanatory note of the Government's assessments must also be sent and the presumed date for discussion or adoption must be indicated.

¹⁵¹ First Council Directive 67/227/EEC of 11 April 1967 on the harmonization of the Laws of the Member States relating to turnover taxes and second Directive 67/228/EEC of 11 April 1967 on the matter of harmonization of the legislation of the Member States relating to turnover taxes. The provisions of the aforementioned Directives were, in part, revoked and replaced by the Directive of 17 May 1977 No. 77/388/EEC. Subsequently, from 1st January 2007 the Directive No. 2006/112/EC, containing the reformulation of Directive No. 77/388/EEC integrating and systematizing into a single text all the changes occurred over time.

it envisaged the creation of a vast single market for the exchange of goods among the Member Countries.

In Italy, the discussion about the opportunity to change the tax system was in place since the mid-60s: first Directive 67/227/EEC did nothing but increase in the Legislator the belief of the need for such reform process. The beginning of the tax reform came with the delegated Law n ° 825/71, with which the Parliament instructed the Government to provide for a reorganization of the Italian tax system: the executive, having acknowledged this, issued two groups of delegated Decrees: a first one, made up of nineteen measures published on October 26, 1972, by which indirect taxes on business were regulated and the value added tax was introduced; a second group, consisting of ten Decrees issued on 29 September 1973, with which the sector of direct taxes was reorganized overall¹⁵². The tax reform therefore was set up with the aim at reorganizing the National tax system through the establishment of new taxes, fulfilling Constitutional and Community provisions more fully and in a more adequate manner.¹⁵³

As already mentioned above, the birth of value added tax is the result of Directive 67/227/EEC, in which it can be observed the harmonizing will in the expression "*common system*", principle defined according to what is stated in Art. 2: «*The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged*». The latter was incorporated into Italian Law by the delegated Law for the tax reform n. 825 of 1971 and the consequent Presidential Decree of October 26, 1972, n. 633, which is still the main reference text for the regulation of the tax in the Italian legislative landscape, as changes have occurred at European level

¹⁵² RUSSO P., "*Manuale di diritto tributario – Parte speciale*", Milano, 2009, pp.3 and following.

¹⁵³ Direct taxes were hinged on two main taxes, namely the IRPEF, tax on the income of individuals, and the IRPEG, tax on the income of legal persons; talking about indirect taxes, the Value Added Tax, was established in such a way that it constituted the heart of this category, by repealing the IGE, general tax on revenue; as part of local finance, the Legislator decided to repeal a series of taxes and replace them with ILOR, the Local tax on Income, which was a direct tax, the INVIM, tax on the increase in value of buildings, the municipal tax on advertising and the tax on municipal concessions. On the point see FALSITTA G., "*Manuale di diritto tributario*", parte speciale, 8th edition, Padova, 2012.

through Directives, which have not however renewed the ratio of the tax.

If the first Directive has a political-programmatic nature where it highlights the reasons for Community policy that suggested the adoption of value added tax, as an instrument for the achievement of community objectives, in order to promote a balanced and non-discriminatory taxation of market operations, the Second Directive n. 67/228/EEC has a more technical content and defines the structure and the mode of application of the common system and, first of all, the operations that are subject to VAT. This Directive describes the chargeable event as the time for certain economic facts or transactions deemed relevant to impose a levy on a entity: it involves the supply of goods and the provision of services by a taxable person in the tax territory of the individual Member States of the Community and of the act of introduction and importation of goods into the national territory, for which reference must be made to the concept and regulation of intra-Community acquisition¹⁵⁴. The realization of the sale of goods or the provision of services identifies those legally identifiable taxable situations, which represents the external boundary of the tax-generating event, acting as an instrument to delimit the sphere of tax application¹⁵⁵.

Then, the tax subjectivity profile goes hand in hand with the aforementioned objective one, which requires the performance of the economic operations for trade and professional services¹⁵⁶.

¹⁵⁴ Directive 16 December 1991 No. 91/680/EEC introducing the new regulation on trade between Community economic operators.

¹⁵⁵ Article 2, Council Directive No. 2006/112/EC of 28 November 2006 on the common system of value added tax.

¹⁵⁶ The Community discipline in Articles 9-13 of the Directive n. 2006/112/EC provides a decidedly objective and specific definition of a taxable person: «*Taxable person shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity*». The Presidential Decree n.633/1972 follows a different normative technique, since it divides the notion of taxable person: it defines the exercise of business and trade as an usual profession of concerning the commercial or agricultural activities foreseen by Articles 2135 and 2195 of the Civil Code, even in the absence of entities organized as enterprises, and includes those companies organized in the form of a company that provide services that are not included in Article 215 of the Civil Code (Article 4, Presidential Decree No. 633/72); while for professional services refers to any activity of self-employment, carried out by individuals, law partnerships or associations without legal personality founded by individuals in an associated form (Article 5, Presidential Decree No. 633/72).

In addition to the previous, the territorial profile, i.e. the fact that the supply of goods and services are rendered by a taxable person established in the national territory towards a purchaser who resides in the same country, made the entire transaction to be a matter of exclusively internal relevance and therefore determines the application of the tax according to the national mechanism and rate, which is opposed to that of the reverse charge provided for instead in the context of intra-Community transactions.

Continuing to read Article 2 of the First Directive, it is also stated that: *«On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components»*. This highlights the compensation claim and deduction institutes, which so deeply characterize the proper functioning of the VAT system. It is through these mechanisms that only added value taxation of each individual stage of the economic-productive chain is ensured so as to shoot final consumption, to be understood as the purchase of an asset or service by the person to whom the right to tax deduction is not permitted, also clarified by the Court of Justice case-law¹⁵⁷. In these terms, the mechanism of deduction and the particular elements of the tax system in the national dimension, as an instrument to ensure VAT purpose fulfilling, have been well established, namely to neutralize taxation among the several B2B intermediate steps before consumption being ultimately taxed. The economic operators do not remain engraved by shifting the burden on the counterpart of the exchange, and on the other hand, by benefiting from the right to VAT deduction, paid on purchases made in the exercise of the activity.

3.1.2. VAT rules evolution within the European Union and the reverse charge procedure

¹⁵⁷ EU Court of Justice, ruling of 22.11.2001 (cases C-541/99 and 542/99) and Judgment of 20 January 2005, Gruber, C 464/01, EU:C:2005:32, paragraph 36.

As previously said, VAT is a tax originally created to encourage trade between the European countries after internal borders removing. The adoption of the Directive n. 77/388/EEC of 17 May 1977, better known as the Sixth Directive, partially both integrated and modified the First Directive and repealed the Second Directive. It represents an important step in the process of VAT harmonizing system since it introduced a unique tax base through which make the correct VAT computation to be cleared to tax-related agencies and, at the same time, reduced the area of freedom granted to each Member State. During the process of the single European area erection, the White Paper on the completion of the internal mark appears to be of significant importance, since it included among other things the abolition of tax barriers and border controls following the VAT principle of taxation at origin, with application of the seller's State tax while safeguarding the buyer's right to VAT deduction in its own country. Fiscal frontiers ending, therefore, meant abandoning the principle of taxation in the State of destination, switching to the principle of taxation in the State of origin, which among other things does not require imports and exports tax adjustments, in the sense of a compensatory taxation of the former and a tax exemption of the latter, where the goods are subject to taxation in the country of origin. However, fraud and competition risks that emerged between Member States because of VAT rates wide divergence, as well as the need to provide for new VAT compensation mechanisms between the EU States, some technical problems moving to the system of taxation at origin arose, in the face of financial imbalances that would have come after due to the fact that VAT would have been paid into a State on intra-Community transactions but the corresponding deduction right would have accrued into a different one instead. Pursuant to the above principles, and in order to address the impact that this change could have on Member States' tax revenue, European Commission had foreseen the creation of a compensation system¹⁵⁸ for VAT intra-Community sales,

¹⁵⁸ One-stop shop concept set out in the Communication from the Commission COM (2011) 851 final "on the future of VAT Towards a simpler, more robust and efficient VAT system tailored to the single market". Companies operating within the Union can easily pay VAT through an online web portal in their country of origin. Operators will be able to declare and clearance VAT using an electronic channel in their own language, following the administrative rules of the country of origin. Member States will be able to balance VAT credit debit with one another.

the operating details of which were to be adopted by the Council on a proposal from the Commission. Regrettably, however, quite few problems intercepted on the operation and administration of the one-stop shop (clearing house) among the Community countries to make runs, especially as regards its effective suitability to ensure to each State the total VAT revenue related to goods and services exchanged in their specific territories but purchased from other Member States, constituted a real obstacle and barrier to the transition to the taxation system at origin which was supposed to homogenize Community operations being treated as national ones.

In fact, what seemed to be a simple technical and organizational question easily solvable and surmounted by an adequate clearance mechanism operation, it has revealed the strong mistrust existing in the Community on issues of particular importance and significance, as that of VAT, and more generally of fiscal matters. The White Paper was then transposed into the Single European Act, which came into force on 1 July 1987, which established the finalisation of the single market by 31 December 1992¹⁵⁹. In the same year the European Commission also presented its strategy for the completion of the single market focused on three elements: (a) VAT rates gradual harmonisation, (b) abolition of tax borders and (c) introduction of a clearance system between countries of production and final consumption ones¹⁶⁰.

It is only with Directive n. 91/680 of December 16, 1991, transposed within the Italian ruling system with the Law Decree n. 331/1993, proposals formulated in the White Paper and in the Single European Act came to fruition. This moment is undoubtedly the most important step in the construction of the single market since the launch of VAT so far. The Directive, in fact, came along with the eradication of

¹⁵⁹ Commission of the European Community, Completion of the internal market. Commission White Paper for the European Council, Brussels, 14 June 1985, COM (85) 310 final. Regarding the effects of this term, a declaration by the Conference that adopted the text of the Single European Act should be recalled. In the declaration relating to Article 8A, attached to the final act, the Conference expressed *"its firm political will to take before January 1993 the decisions necessary to complete the internal market defined in those provisions and more particularly the decisions necessary to implement the Commission's programme described in the White Paper on the Internal Market. Setting the date of 31 December 1992 does not create an automatic legal effect"*. On the point see CANGELOSI R.A., *"Dal progetto del trattato Spinelli all'Atto Unico Europeo"*, Milano, 1987.

¹⁶⁰ FICHERA F., *"Fisco ed Unione europea: l'acquis comunitarie"*, inside Rivista di diritto finanziario e scienza delle finanze, 2003, I, pp. 429 and following.

tax barriers between Member States, redefining the tax application territorial concept. If before all imports and exports of goods from the territory of the State were considered as imports and exports, with the Directive in question the concept of intra-community operation is introduced, including all the exchanges between Member Countries by restricting imports or exports those exclusively occurring between a European Member and a third States not belonging to the European Community¹⁶¹. All transactions carried out within European single market territory had to be considered domestic, while operations carried out with subjects belonging to third countries have been recognized as extraterritorial.

However, since no sufficient degree of harmonization was reached between the States, the Community had to introduce a new tax condition applicable to transactions between Member Countries. The differentiation between internal and intra-Community operations became necessary as a result of the difficulty to put the ultimate taxation regime, based on the principle of taxation in the State of origin. This impossibility was mainly due to the differences between the VAT rates and clearance adjustment mechanisms, as previously noted. The Community legislator has therefore provided for a transitional period¹⁶² during which intra-Community transactions were generally taxed in the country of destination. This system was based on the reverse charge mechanism, which provides for the tax exemption and involves the disapplication of VAT claim, only for the sale of goods and services leaving the transferee's country. The transferee is required to issue an invoice, or to complete the invoice received, and to register the document both in the register of sales invoices and in the register of purchase invoices, with the effect that VAT is equal to the deductible one. The widespread application of taxation at destination, through the reverse charge mechanism, allows the current differences in rates to be maintained. The reverse charge, therefore, is nothing more than a tool with which the Community legislator, in the absence of other instruments capable of carrying out the taxation to the country of destination, has charged the buyer with execution of those functions that were once carried out by the customs

¹⁶¹ The definition of the Community territory is provided by Article 7, subparagraph 1, letter b), of the Presidential Decree of 26/10/72, n. 633.

¹⁶² This period was initially supposed to last from 1 January 1993 to 31 December 1996, but is still in force.

administration. Basically, with this mechanism, it will be the responsibility of the taxable person who purchases a good or service from the Community seller established in another EU country, to comply with declaration procedures and VAT payment. Although the Sixth Directive marked a moment of VAT legislation harmonization of the various Member Countries, subsequent interventions resulted in a series of rules that over time have made the structure more complex.

With a view to ensure consistency, clarity and rationality of the VAT common system which has been changing frequently¹⁶³, the Council adopted Directive n. 2006/112/EC of 28 November 2006 by which the structure of the regulatory text was recast with the declared intention not to introduce substantial changes to the already existing legislation.

Directive 2006/112/EC adoption was a crucial step along the broader path towards the overcoming of the current transitional regime, expressly mentioned by the European legislator¹⁶⁴. After its introduction and enactment, the European Council has sketched out a programme guiding VAT evolution under the name of Vat Package¹⁶⁵, which was supposed to lead to a definitive tax system and a single market. The Commission's intention to reassess and adjust the taxation principle at origin as a definitive system of VAT taxation in the internal market can be viewed in the Commission path to embark upon a wide-ranging consultation process with the various stakeholders on the possible future scenarios of the VAT system. This debate was promoted upon the publication of the "Green Paper on the future of

¹⁶³ Among the regulatory measures adopted by the European Community with a view to ensure the completion and implementation of the principles established by the Sixth Directive, it is worth mentioning: the Directive No. 79/1072/EEC of 6.12.1979 which defined the procedures under which the Member States should have repaid and refund VAT to taxable persons resident in other EU countries who have carried out taxable transactions within their territory; the Directive n. 84/386/EEC of 31.07.1984 which amended the Sixth Directive on hiring out of movable tangible property VAT charging; the Directive n. 86/560/EEC of 17.11.1986 which made the VAT refund procedure applicable also to taxable persons not resident in the territory of the Community; the Directive n. 85/362/EEC of 16.07.1985 which recognized the VAT exemption of goods different from means of transport, under temporary importation; the Directive n. 89/465/EEC of 18.07.1989, which modified the Sixth Directive by eliminating the exemptions provided for by Art. 28, third subparagraph. It is worth mentioning again Directive n. 91/680/EEC which, by amending the Sixth Directive, outlined the transitional VAT regime for intra-Community operations.

¹⁶⁴ Article 402 of Directive 2006/112/EC explicitly states that: *"The arrangements provided for in this Directive for the taxation of trade between Member States are transitional and shall be replaced by definitive arrangements based in principle on the taxation in the Member State of origin of the supply of goods or services"*.

¹⁶⁵ The Vat Package consists of Directives No. 2008/8/CE, No. 2008/9/EC and No. 2008/117/CE incorporated into Italian Law by Legislative Decree No. 18 of 11 February 2010.

VAT – Toward a simpler, more robust and efficient VAT system", aimed at collecting new proposals and indications from Community operators on how the VAT system could be improved¹⁶⁶.

On 4 October 2017, the European Commission presented some proposals for amendments to the EU rules aimed at identifying new ways of carrying out trade between EU Member States in the document COM (2017) 569. At present, it should be mentioned the VAT COM (2018) 329 final is about establishing a definitive VAT system for cross-border trade and including a proposal for a Council regulation on the fight against VAT fraud, for which reference is made to the fourth paragraph of the present chapter.

3.2. Invoice legal value and related obligations in the VAT system

VAT mechanism application produces legal effects as a consequence of the exchange of goods or services and of all the economic operations carried out between two legal entities. The lender or seller is the person liable to pay VAT to the national tax administration offices on taxable transactions and executed to the transferee or purchaser, who will be charged the payment of VAT amount as a result of being mentioned on the invoice. Therefore, in order to be entitled to exercise VAT deduction and recovery rights, the seller is obliged to issue an invoice following the execution of operations.

The Presidential Decree n. 633/72 requires the seller to comply with certain tax obligations. Actually, one of the first consists in the obligation to certify and document economic transactions put into effect through invoice formation and sending, as required by Article 21. Into the VAT scheme, invoicing is of fundamental importance since, in addition to correctly documenting the transaction of goods transfer or the provision of underlying services, it gathers information on the applicable VAT scheme, consistently with the kind of benefit or the type of service, allows Tax Administrations to perform and fulfil their control and tax assessment

¹⁶⁶ COM (2010) 695 of 12.12.2010, available on the website of the European Commission: https://ec.europa.eu/taxation_customs/consultations-get-involved/tax-consultations/green-paper-future-vat-towards-a-simpler-more-robust-efficient-vat-system_en.

duties, whilst giving the taxable person or service provider the chance to charge VAT and allowing the assignee or the buyer for VAT deduction at the same time. In this sense, Article 203 of Directive 2006/112/EC states that « *VAT shall be payable by any person who enters the VAT on an invoice* » with the consequence that if a person issues invoices for transactions that have never been carried out, the VAT application mechanism begins and formally qualifies the latter as an imposing tax situation, even in the absence of any generating event intended as a supply of goods or services. In this respect, the invoice, that is the central tool to comply with VAT legal documentary rules, becomes itself both the tax presumption and the event giving rise to taxation¹⁶⁷.

Hence, the invoice document has to be considered the necessary document that must be issued after the execution of taxable transactions in order to (a) provide for input tax deduction entitlement, incurred in connection with execution and completion of transactions or operations; (b) charge VAT amounts to the counterparty; (c) correctly calculate VAT which need to be paid to the authorities by the difference between VAT credits and debts.

Invoice format should include the details concerning the parties among whom the economic transaction takes place, and in particular the VAT number of both the

¹⁶⁷ Coherently with Article 2 of the VAT Directive, sale of goods which gives rise to the transfer of ownership of the latter, or the formation or transfer of rights of use as well as the provision of services, shall be deemed to be objective presuppositions of the tax. From these considerations, it may emerge that the mere emission and possession of the invoice constitutes the chargeable event of the tax thus being totally inconsistent with the nature of VAT as a tax on consumption. Invoice issuing, in the absence of a chargeable event, has effects both on the seller side because it enables one party to charge VAT and, especially, on the liability side, because it introduces the buyer's right to VAT deduction just for having the bill. The Directive means the chargeable event as the fact for which the necessary conditions are met for VAT applicability and identifies for this purpose the supply of goods and the provision of services and not the mere emission of the invoice. Possession of the invoice by the purchaser or customer of the service remains a necessary but not sufficient condition for VAT deduction, since the occurrence of further conditions for exercising the right must take place. The Community Directive provides that for the exercise of VAT deduction it is necessary to meet the general principle of operation inherence that assumes that the goods and services purchased are used for the purpose of their business operations. The issue was directly addressed in the ruling decision C-342/87, *Genius Holding BV*, in which it was stated that the exercise of the right of VAT deduction envisaged by the Directive does not extend to the tax due exclusively for the fact that it is indicated and mentioned on the invoice. As a direct consequence of this approach, invoices issued for non-existent transactions cannot give rise to the right to deduct for the purchaser or customer of the service. Within the Italian national context, when invoices issuing does not match up with the performance of a service or the sale of an asset, because it has never happened, it's about invoicing for non-existent transactions. Emission and use of false invoices are punishable by imprisonment and detention from one year and six months to six years (Article 8, subparagraph 1, Legislative Decree No. 74/00). On the point see LOGOZZO M., "*L'obbligo di fatturazione nell'IVA*", Milano, 2005, pp. 165 and following.

issuer and recipient¹⁶⁸, the sequential number that identifies the specific document, the generic description of the transaction, the taxable base separately for each rate applied to the same invoice¹⁶⁹. In some cases, provided for by Article 22 of Presidential Decree n. 633/1972, the exemption from the obligation to invoice issuing is permitted, although the obligation to document the transaction by receipt still remains to be done. The exemption may derive from the nature of the subject, as in the case of retail traders, banks and insurance companies, or from the characteristics of the transaction. Even in these circumstances, the duty to issue invoices arises when the customer claims for it.

3.2.1. Charging and reclaim mechanism and the relationship with invoice

Article 1, subparagraph 2, of Directive 2006/112/EC explicitly points out that the common principle of the VAT system lies in adding a general consumption tax to the goods and services to the price of the latter mentioned on the invoice on a pro rata basis, whatever the number of operations in the production and distribution process prior to the taxation of private final consumers. This last rule outlines the heart of the VAT application mechanism, whose task can be traced to the need to charge the tax towards the transferee or purchaser, who will operate and exercise its own right of deduction, for the person who engages in sale or exchange operations of goods or the provision of services¹⁷⁰. The value added tax must be viewed as that levy on consumption which must be supported by the final consumer and must not fall on the seller of the good or service supplied. In this respect, the invoice is the tool necessary to enable access to VAT charging and VAT

¹⁶⁸ Article 214 of Directive 2006/112/EC requires Member States to identify taxable taxpayers via an individual number. In particular, in the Regulation of 7 October 2010, n. 904/2010 on administrative cooperation and fight against fraud, it was contemplated in Article 17 that each Member State files in an electronic system - the VIES (VAT Information Exchange System) - a series of data of the taxable persons residing in the territory: all those concerning the identity, activity, organization and address of the persons to whom a VAT identification number has been assigned, in accordance with Article 213 of Directive 2006/112/EC.

¹⁶⁹ Article 21 of Presidential Decree No. 633/1972.

¹⁷⁰ The second paragraph of Article 1 of Directive 2006/112/EC states on the point that: «*On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components. The common system of VAT shall be applied up to and including the retail trade stage*».

reclaiming. The VAT document must show separately the price net of tax and the corresponding tax for each different rate, confirming the rational link between the invoicing of each taxable transaction and the charging of the tax separately depending on the amount types.

It is therefore possible to state that any document, that brings with it VAT charges, is to be considered an invoice, even though in circumstances in which it incorporates incomplete or incorrect information. However, this does not mean that all invoices require tax charge express statement¹⁷¹.

The community provision, contained in the Article 203 of the Council Directive n. 2006/112, according to which VAT is payable by anyone who enters the tax on an invoice, it is to be understood in the context of the overall tax enforcement mechanism. Imposing tax payment of an excluded operation from the scope of VAT, for the sole reason that value added tax amounts are showed on an invoice, is an argument well-supplemented and overcome by the doctrinal approach expressed by the Court of Justice in the Community¹⁷², aimed precisely at denying that a pure and simply formal data disclosed and enclosed in an invoice can give tax value to operations that have nothing to do with the VAT system. The question is that the exercise of the deduction right cannot be extended and made it possible just because the bill displays VAT charges, provided that if any tax invoiced was deductible, it would make tax frauds easier¹⁷³. This conclusion appears in line with

¹⁷¹ In confirmation of what has been said, Article 21-bis, subparagraph 1, of Presidential Decree No. 633/72 provides that for the simplified invoices the VAT amount can be incorporated into the price of the asset sold.

Continuing, Article 226 of Directive 2006/112/EC is in the case of exempted transactions within the tax application mechanism and in the case of non-taxable transactions and not territorially relevant in the State of residence of the seller or transferor, provide for the obligation to issue the bill confirming the fact that the invoice is a relevant element in the application of the VAT model while not implying and not requiring VAT explicit charging. In these cases, the invoice proves the transaction for the purpose of determining the volume of business - understood as the sum of the sales of goods and services put in place - of the taxable person occurred and relevant for the controls carried out by the Financial Administration offices. The exemptions intended as operations where there is no VAT charging and for which deduction is not possible, are indicated in Articles 131 to 137 of Directive 2006/112/EC.

¹⁷² Judgment of the European Court of 19 September 2000, Case C-454/98, Schmeink & Cofreth e Strobel.

¹⁷³ In its Judgment of 27 May 2015 (5th Civil Division), the Italian Court of Cassation rejected the main appeal of the Italian Revenue Agency and the appeal of Pavan S.p.A., confirming the decision of the first instance Judges who had invalidated the assessment notice issued against the company concerning the recovery of the higher VAT in relation to the issue of an invoice for an operation which has not occurred, while it considered legitimate the claim formulated with the same act to recover the VAT due by the company for failing to invoicing.

the current text of the VAT Directive, which, as already highlighted in fiscal literature¹⁷⁴, recognizes the invoice as a purely instrumental value for the exercise of the deduction right, in any case dependent on precise conditions.

Invoices give rise to VAT recovery and reclaim duty, which takes on that documentary value as evidence of the credit right that is realized by means of recovery action and as to act like an essential tool for the purpose of exercising the right of VAT deduction. Article 18 of Presidential Decree n. 633/1972, in formalising the obligation to charge tax to the purchaser in order to recover VAT on the value of goods and services sold, establishes a strong relationship between recovery and invoicing.

Through the mechanism abovementioned, tax shifting from the taxable person to a subsequent operator is carried out, and so on up to the final consumer. Thus, the obligation to VAT charging and VAT recovery right exercising ends up with the obligation to issue an invoice. Violation of compliance with recovery and deduction rules must be traced to the actionable event referred to in Article 6 of the Legislative Decree n. 471/1997 which disciplines and sanctions when no invoice is issued in the face of transactions concluded between the parties¹⁷⁵. Article 18, in its first subparagraph, establishes a general rule that is the central foundation of the VAT dynamic mechanism application: the taxable person must charge the tax as it is from the moment of execution of operations and invoice submission that arises on the side of the seller the right to reclaim VAT towards the buyer, which is well different from the right the seller claims as any payment of the price of the taxable transaction. With the aim at attesting the power to exercise any right, VAT charging must come with invoice issuing, which serves to protect the neutrality of the tax on value added created along upstream and downstream industry stages of production¹⁷⁶.

In line with this, the buyer cannot choose whether to pay the VAT charged or

In this respect, it is also worth mentioning Italian Cassation Court's Judgment No. 11396 of 3 June 2015 with regard to VAT, in which the regularisation by issuing variations is not allowed with reference to non-existent transactions for which an invoice has been issued.

¹⁷⁴ COMELLI A., *"Iva nazionale ed Iva comunitaria"*, Padova, 2000, p. 397.

¹⁷⁵ See paragraph 2.1.7. of the present work.

¹⁷⁶ PORTALE R., *"IVA – Imposta sul valore aggiunto 2018"*, Milano, 2017, p. 895.

postpone the payment to the supplier, dimension in which there's no backing out¹⁷⁷.

At the same time, the invoice charge provides documentary evidence for the purpose of tax clearance and VAT periodic payment to Fiscal Agencies, computed on the economic transactions as a whole, referring to a given tax period. Reclaiming right arises as a result of this charge, regardless of the effective and proper payment made by the buyer, as well as the right to VAT deduction can be exercised in the light of the invoice generation and submission, and regardless of the actual VAT payment to the its own supplier. Invoice legal value shows itself both from the point of view of VAT recovery and as from the right to deduct the VAT charged. From this, with reference to the latter provision, it is noticeable the added value chain process breakdown, that occur between taxable persons and private consumers. Only this subject, because directly affected by taxation, will have no interest in receiving the invoice, which is why the legislator envisaged the recognition of non-compulsory billing, as is referred to in the second subparagraph of Article 18.

Indeed, as part of the operations carried out with final consumers, the tax can be directly included in the fee and there is therefore no deduction in favour of those who account for the subjects of the last link in the value-added tax chain. On the opposite side, separately VAT charging is essential when the transaction is carried out with regard to a VAT taxable person: there can be documentary evidence of recovery and deduction rights that can be exercised at a time when VAT becomes chargeable, and this regardless of the price and tax effective payment.

Following such a mechanism, the invoice is the means by which VAT application could work and run throughout the circle of sales, precisely because it ensures neutrality principle attainment with respect to VAT taxable persons.

Basically, thanks to the invoice, emerges the right of credit towards the downstream party which is a different right from that represented by the payment of the transaction price, since the latter may include the tax value, thus denying existence of a recovery relationship. If, therefore, the Article 18 expresses the principle of bridging the link between recovery and invoice, Article 21 sets out all the requisites

¹⁷⁷ Italian Cassation Court's Judgment (2nd Civil Division) n. 17861 of 24 November 2003.

prescribed by the Law with the aim of billing operations.

In addition to what already said, Directive 2006/112/EC, in relation to VAT deduction mechanisms, stipulates in Article 178¹⁷⁸ that for the purpose of deductibility, purchaser shall be in possession of an invoice made out and drafted in accordance with Articles 220 and following of the Directive. In the Court's rulings¹⁷⁹ some guidance principles were echoed, and specifically those related to invoice features and the rule requiring that the purchaser must be in possession of an invoice drawn up in accordance with the Community regulations for the purpose of VAT deductibility. It should be noted that in the previous Directive 77/388/EEC in Article 22, subparagraph 3, it was laid down that the taxable person had the obligation to issue an invoice or the latter, alternatively, was allowed to document the economic operation with an equivalent document¹⁸⁰.

This opportunity, namely that of operating with "*other document serving as invoices*", which no longer exists in the current Directive 2006/112/EC, has given rise to some conflicting views and declarations by the Court of Justice. Particularly, the Court's Judgment of 15 July 2010, case C-368/09, pointed out that the European Countries cannot make the VAT deduction right dependent on new specific conditions approved by the National Law concerning requirements and

¹⁷⁸ Article 178 of Directive 2006/112/EC expressly states that: «*in order to exercise the right of deduction, a taxable person must meet the following conditions: (a) or the purposes of deductions pursuant to Article 168(a), in respect of the supply of goods or services, he must hold an invoice drawn up in accordance with Articles 220 to 236 and Articles 238, 239 and 240; (b) for the purposes of deductions pursuant to Article 168(b), in respect of transactions treated as the supply of goods or services, he must comply with the formalities as laid down by each Member State; (c) for the purposes of deductions pursuant to Article 168(c), in respect of the intra-Community acquisition of goods, he must set out in the VAT return provided for in Article 250 all the information needed for the amount of the VAT due on his intra-Community acquisitions of goods to be calculated and he must hold an invoice drawn up in accordance with Articles 220 to 236; (d) for the purposes of deductions pursuant to Article 168(d), in respect of transactions treated as intra-Community acquisitions of goods, he must complete the formalities as laid down by each Member State; (e) for the purposes of deductions pursuant to Article 168(e), in respect of the importation of goods, he must hold an import document specifying him as consignee or importer, and stating the amount of VAT due or enabling that amount to be calculated; (f) when required to pay VAT as a customer where Articles 194 to 197 or Article 199 apply, he must comply with the formalities as laid down by each Member State*».

¹⁷⁹ In Court's Judgment of 14 July 1988, joined cases C-123 and 330/87, it was stated that the Sixth Directive allowed the Member States to make possible the exercise of the deduction right, conditional upon the possession of an invoice containing certain information necessary to ensure the value added tax clearance and collection and control by the national tax Administration offices. Individual special rules did not make the exercise of the deduction impracticable and unworkable.

¹⁸⁰ Article 22, subparagraph 3, of Directive 77/388/EEC expressly stated that: «*Every taxable person shall issue an invoice, or other document serving as invoice in respect of all goods and services supplied by him to another taxable person, and shall keep a copy thereof*». The reference is made to Directive 77/388/EEC in its previous version before the changes made by the transitional regime by the EEC Directive of December 16, 1991, n. 91/680/EEC.

content of invoices that are not expressly provided for by provisions of the Directive¹⁸¹. As opposite to the previous, the Court's Judgment of 8 May 2013, case C-271/12 in connection with the old discipline of the Sixth Directive, highlighted that Community Legislation would not prevent National Law intervention and contribution to the European one, under which the right of VAT deductibility could be denied to taxable persons holding not complete invoices¹⁸². Currently, and in compliance with Directive n. 2006/112, no longer exists the chance for nobody to issue a document similar to the invoice, as mandated by Article 226.

The purchaser is required to necessarily ask for and keep the invoice fulfilling those material and substantive requirements of the VAT deductibility legislation, which cannot be restricted in the presence of pure formal errors¹⁸³.

In short, the invoice stands for the main document for the VAT deduction right especially because it defines the tax period in which taxpayers may require VAT to be reclaimed. In essence, this period is the time during which the two requirements prescribed by the Community Legislation for the exercise of the right to deduct occur, i.e. the goods or the provision of the services did take place and that of invoice possession.

¹⁸¹ That judgment, at paragraph 45, states that: «*In those circumstances, the answer to be given to the questions referred is that Articles 167, 178(a), 220(1) and 226 of Directive 2006/112 must be interpreted as precluding national legislation or practice whereby the national authorities deny to a taxable person the right to deduct from the VAT which he is liable to pay the VAT due or paid in respect of services supplied to him on the grounds that the initial invoice, in the possession of the taxable person when the deduction is made, contained an incorrect completion date for the supply of services and the numbering of the subsequently corrected invoice and the credit note cancelling the initial invoice were not sequential, if the material conditions governing deduction are satisfied and, before the tax authority concerned has made a decision, the taxable person has submitted to the tax authority a corrected invoice stating the correct date on which that supply of services was completed, even though the numbering of that invoice and the credit note cancelling the initial invoice are not sequential*».

¹⁸² That judgment, at paragraph 8, states that: «*Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion, subject to the requirement of equal treatment for domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers*».

¹⁸³ VAT deduction limitation can happen if material and substantive requirements are missing, when it is proved that the taxable person has not been able to demonstrate the existence of operations that gives rise to the right, merely due to the taxpayer's infringement and non-complying behaviour. It follows that the right to deduct VAT must be granted if the substantive requirements of the tax due and the existence of goods or services subject to VAT co-exist and are satisfied. Cassation Judges with the Judgment n. 17757 of September 9, 2016 have stated that the neutrality of the imposition of value added implies that, even in the absence of an annual declaration, the tax surplus is recognized by the tax Court if all the substantial requirements for deduction have been met by the tax payer.

3.2.2. Book entry requirements in the European Directive and in the Italian Law

Into the European VAT scheme, accounting obligations have become of crucial importance in order to determine VAT, along with the income tax, charges and payments.

Community Directive 2006/112/EC in sections 2 and 3 sets out several articles devoted to records keeping ruling and invoices filling system obligations¹⁸⁴. Specifically, Article 242

does not accurately clarify accounting and book entry substantial features, on the grounds that only sets out that invoices recording and keeping must be sufficiently detailed in order to allow the VAT mechanism to operate and the effectiveness of control and monitoring activity by the tax administration offices¹⁸⁵. Moving on in Community Directive section 2, Article 243 refers specifically to the obligation to goods register keeping, sent and shipped by a taxable person or a third party on its behalf moved outside a singular EU Country of departure in the context of transactions related to such goods or to their temporary use¹⁸⁶.

Equally, every taxable person residing in a specific Member State is required to keep accounting records related to goods whose property has been transferred

¹⁸⁴ The obligations explicitly indicated in the Directive 2006/112/EC can be integrated and supplemented by individual Member States law-making in accordance with the provisions of Article 273, which states that: «Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers. The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3».

¹⁸⁵ Article 242 of Directive 2006/112/EC expressly states that: «Every taxable person shall keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities».

¹⁸⁶ There are additional specific obligations concerning invoices keeping in Articles 244 to 249 of Directive 2006/112/CE. Particularly, in Article 244 it is provided that: «Every taxable person shall ensure that copies of the invoices issued by himself, or by his customer or, in his name and on his behalf, by a third party, and all the invoices which he has received, are stored». First paragraph of Article 247, concerning how long invoices must be stored, states that: «Each Member State shall determine the period throughout which taxable persons must ensure the storage of invoices relating to the supply of goods or services in its territory and invoices received by taxable persons established in its territory». As said previously in the present work, in Italy it is required by Article 22 of the Presidential Decree n.600 of September 29, 1973, that invoices issued and received by the taxable person must be held until the fiscal assessment relating to the corresponding tax period is concluded. This requirement is also accompanied by the provisions of Article 2220 of the Civil Code which provides for a longer term of 10 years for all accounting documentation, including sale and purchase invoices.

from another taxable person in another Member State, always for the purpose of working on the assets¹⁸⁷. The first of the two Articles, therefore introduces the generic obligation of keeping the accounts at the hands of all taxable persons and substantially explains its two main duties and goals, namely: ensuring the proper application of VAT to each production and distribution transaction and allowing checks and tax assessments by National fiscal Agencies.

The aforementioned functions are truly strictly connected. The first one underlies the working principles underlying the value added tax scheme, which is designed to apply VAT to each singular economic operations of the whole selling chain and then collectively claimed and paid to the National Revenue Agency. The second one shows how accounting represents a prerequisite and an indispensable mean for both the Revenue Agency and financial police in case of fiscal audits and tax assessments aimed at investigating the tax payer's VAT position. To this end, it is possible to state that VAT bookkeeping accounts for the place where tax application mechanism of VAT credits and debts netting occurs, as it is in the accounting registers where specific VAT values of individual transactions and invoices can be found alongside the global VAT amount either to be paid or to be deducted on the mass of the operations made. Specifically, in complying with bookkeeping, VAT liability related to sales invoices is compared with VAT credit emerged from purchase invoices in order to determine the debit or credit balance of the period. Therefore, accounting books shall be regarded as the necessary documental support and procedure by means of which sales and purchase invoices are recorded and VAT clearance and payment are carried out. In other words, it qualifies as that comparison between debit and credit positions shown after

¹⁸⁷ In Italy, the obligation to record goods exchanged with other Member States is expressly stated in Article 50, 5th paragraph, of the Decree Law n. 331/1993, claiming that movements relating to goods sent to another State of the European Economic Community or coming from it on the basis of one of the provisions referred to in Article 38, paragraph 5, letter a) must be recorded in a special register, kept in accordance with Article 39 of the Presidential Decree of October 26, 1972, n. 633. Paragraph 6, on the other hand, envisages that each party is required to inform the Revenue Agency of the intra-Community sales and purchases made during each period. This issue in the National Legislation is also relevant as there is a specific provision represented by the Presidential Decree 10 November 1997, n. 441 which includes rules for the sale and purchase presumptions observation in which it is expected that if, following a tax audit, the company holds third-party goods of which it is not possible to prove the origin, are considered goods purchased. In the same sense, own goods sent to third parties for any purpose other than sale or trade, are presumed to be sold, if there is no specific documentation that demonstrates the actual title of the transfer.

invoices recording, with the aim to determine the balance for the period (monthly or quarterly). In the Community Directive there is no specific provision which expressly regulate VAT payment even though in Article 179, related to modalities of VAT deductibility rights exercising and in Articles 206 and following, on the payment methods, there is direct reference to the need to determine a net amount between the VAT to be paid and the amount to be deducted in order to compute the right and actual amount of the VAT debt to be paid¹⁸⁸.

Accounting obligations and rules within Italian Legislation are addressed in specific Articles included in the Presidential Decree 26 October 1972, n. 633, which require taxpayers to keep three fundamental accounting registers: the register of sales invoices¹⁸⁹, the register of fees and receipts¹⁹⁰ and the register of purchase invoices¹⁹¹ in which those invoices issued and received, as a result of the business operations made by the tax payer¹⁷⁷, must be entered.

Basically, Articles 23, 24 and 25 of the Presidential Decree n. 633/1972 require annotation of invoices in the books aforementioned: (a) sale invoices register for supplies and services delivered by taxpayers; (b) VAT receipts register for retail business and operations not to be compulsorily billed; (c) purchase invoices and mandatory self-invoicing register for goods or services acquired or imported. As previously said in note n. 182, from 1 January 1993, with the entry into force of the rules issued in implementation of the EEC Directive n. 91/680, intra-Community

¹⁸⁸ Article 179 of Directive 2006/112/EC, echoing the provisions of Article 18, paragraph 2 of the previous Sixth Directive expressly states that: «*The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with Article 178*».

¹⁸⁹ Particularly, Article 23 of the Presidential Decree n. 633/1972 states that the tax payer must note within fifteen days the invoices issued, in the order of their numbering and with reference to the date of their issue, in a special register. For each invoice, the progressive number and the date of issue of the invoice must be indicated, the taxable amount of the transaction and the amount of the tax, according to the rate applied, and the company name of the purchaser.

¹⁹⁰ The register of receipts is indicated in Article 24 of the Presidential Decree n. 633/1972 and is intended for retailers and other taxpayers indicated in Article 22 of the Presidential Decree n. 633/1972.

¹⁹¹ Article 25 of the Presidential Decree n. 633/1972 provided that the tax payer must number in sequential order purchase invoices and the customs bills relating to goods and services purchased or imported in the course of business, including those issued in accordance with the second paragraph of Article 17, and must record them in a special register before the regular VAT clearance and payment period, or the annual declaration, in which the right to deduct the related tax is exercised. The Decree Law n. 119/2018, with Article 13, in view of the entry into force of the obligation of electronic invoicing, and therefore with a view to facilitating tax payers, abolished purchase invoices numbering, as well as the indication in the register of the progressive number attributed to it. This is because the progressive number is automatically assigned to electronic invoices transmitted via the Interchange System.

operations must also be recorded in a specific register, separately from those documents concerning domestic operations.

In Italian law, there is a strong connection between bookkeeping and the VAT deduction right exercisability since the subsequent VAT clearance, payment and declaration obligations are tied to invoices recording and not automatically linked to the time the invoice was issued¹⁹². In this regard, keeping the accounts takes on a considerable and substantial value in Italy, in such a way that omitted purchase invoices to be recorded lead to the impossibility to exercise the right to deduct VAT, even if all the legal requirements have been met.

This issue is absolutely valuable since even in recent pronouncements of the Italian Court of Cassation, it was confirmed that invoice recording would be preparatory to VAT deductibility¹⁹³. The Court of Justice has already had the opportunity to establish that VAT collection and payment and the proper functioning of the common VAT scheme are compromised when taxpayer's misconduct leads to keeping of accounts and invoices declaration failure¹⁹⁴.

Accounting obligations, envisaged in the European and Italian Legislation, need to be seen in the wider sphere of invoices recording rules, VAT clearance and the VAT annual declaration.

3.2.3. Connection between invoices, VAT clearance and VAT routine formal requirements for Italian firms

Taxable VAT payers must fulfil and meet the following requirements at ensuring compliance with Italian National rules and correctly settle the amount of VAT to be

¹⁹² Following the amendments introduced by Decree No. 50/2017, Article 19 of Presidential Decree No. 633/1972 requires that the right to deduct VAT on goods and services purchased or imported arises when the tax becomes payable, and must be exercised at the latest with the declaration relating to the year in which this right to deduct arose, reducing the terms by one year.

¹⁹³ Judgment of the Court of Cassation, sec. V, 12 February 2014, No. 3107 and order of the Court of Cassation No. 19938 of 2018.

¹⁹⁴ In Court's Judgment of 5 October 2016, case C-576/15, the EU Court has highlighted that the EU legislation imposes on the taxable persons the obligation to maintain proper accounting procedures, to file all the invoices and finally to present a declaration necessary for the determination of the tax due. The failure to maintain an accounting system that allows the application of VAT and its control by the tax administration, and the absence of sale and purchase invoices recording are such as to prevent the exact collection of the tax, and consequently to undermine the proper functioning of the common VAT system. Therefore, EU law does not prevent Member States from considering such violations as VAT evasion.

paid: (a) as said in the previous chapter, sales and purchase invoices must be entered into the accounts in order to definitely prepare accounting books, as set out in Articles 23 and 25 of the Presidential Decree n. 633/1972; (b) determine, monthly or quarterly, the VAT balance to be cleared and to be paid to the Revenue Agency performing, on the basis of invoices issued within the reference period, the comparison between sale and purchase invoices; (c) send to the Revenue Agency on a quarterly basis the VAT clearance accounts communication, introduced by Legislative Decree n. 193/2016 in order to combat against VAT evasion; (d) prepare and electronically submit the "Spesometro" form, which consists in disclosing data relating to all the invoices issued and received and to be transmitted to the Revenue Agency¹⁹⁵; (e) at the end of the year and within a certain time period, every taxable person should draft the annual VAT statement summarizing VAT data included in the individual monthly or quarterly payments.

Such obligations, and the rules to which they relate, have been the subject of an ever-ending regulatory changing process which support the thesis that bookkeeping counts as the preliminary documentary basis for proper VAT clearance procedures operation and effective fiscal controls.

In its first version, Article 27 of Presidential Decree n. 633/1972 required to prepare and disclose a monthly VAT statement thanks to which both display and prove taxpayer's invoices data monthly on which VAT balance and debt payments were determined¹⁹⁶. The introduction of the previously mentioned legal obligation was subsequently removed and then replaced with the obligation to write down the VAT amount to be settled following registration of the original invoices within VAT

¹⁹⁵ Article 21 of Decree Law No. 78/2010 established the "Spesometro" form, that is the obligation which affected those registered for VAT purposes to communicate all the relevant transactions subject to VAT. Subsequently, the Decree Law No. 16/2012 intervened again requiring every subject to communicate all the operations for which an invoice was issued. Recently, the 2018 Italian Budget Law has foreseen its abolition starting from 2019 due to the introduction of the general obligation of electronic invoicing.

¹⁹⁶ Notably, Article 27 of the Presidential Decree No. 633/1972, in its first edition, imposed that within each month the taxpayer had to prepare and issue the VAT periodic statement, drawn up in accordance with the standard format approved by Decree of the Minister of Finance, containing the elements of computation referred to in the next paragraphs and the VAT amount to be paid or to be deducted. At the same time as the monthly statement was issued, the taxpayer had to pay an amount equal to the difference between the total amount of the tax as documented by invoices of the previous month and the total amount deducted pursuant to the first paragraph of Article 19, resulting from purchase invoices and notes of variation referred to in Article 26, recorded in the previous month. If the comparison referred to in the previous paragraph positively tended towards the tax payer, the relative amount had to be deducted in the following month.

book special sections. This was laid down in Article 12, of Law 12 November 1976 n. 751 with effect from 1 January 1977. VAT monthly declaration was subsequently reintroduced¹⁹⁷ finally to be definitely suppressed by Article 11, letter b), of the Presidential Decree n. 435/2001.

Currently, Italian Law requires taxpayers to assess and settle regularly and periodically the value added tax in addition to the annual VAT statement obligation, essential not only for determine the annual definitive VAT taxpayer's position, which is the outcome of the taxable transactions arose within the tax period, but also to be entitled to VAT refunds¹⁹⁸.

Article 27 of the Presidential Decree n. 633/1972, in its current version now embeds changes made by the Presidential Decree of March 23, 1998, n.100 firstly, then amended by Presidential Decree n. 435/2001 with effect from 2002.

In the first paragraph of Article 1 of the Presidential Decree n. 100/1998, it was scheduled that any operator registered for VAT purposes by the 16th day of each month had to determine the difference between the total amount of value added tax payable in the previous month, resulting from the annotations built into accounting books of taxable transactions sale invoices or issued receipts, and the VAT amount, resulting from purchase invoices entered into those books relating to goods and services purchased, thanks to which the right of VAT deduction can be exercised during the particular month in accordance with Article 19 of the Presidential Decree n. 633/1972. Compared to the above previous provision, Article 11 of the Presidential Decree n. 435/2001, entered into force with payments of VAT in year 2002, has abolished those elements for VAT position assessment and component data to be disclosed in a special accounting book section for operators registered for VAT purposes, but it has required the tax payer to keep invoices and produce such elements on the basis of which VAT settlements were performed in the case of Fiscal Agency and Financial Police inspection activity.

Looking further into the regulation of the Presidential Decree n. 100/1998, the

¹⁹⁷ Article 1, subparagraph 2 of the Presidential Decree of March 23, 1998, No. 100 supported by the Revenue Agency's paper No. II/1/20156/2001, titled "*Approvazione del modello di dichiarazione IVA periodica con le relative istruzioni*".

¹⁹⁸ PORTALE R., cited above, pp. 1267 and 1522.

absolute importance of a complete set of accounts which constitutes that baseline for settling VAT and make regular payments appears to be forceful. To put this consideration even stronger, Article 25 of the Presidential Decree n. 633/1972 provides that the entries in the book of purchase invoices must be recorded before the recurrent VAT payment time limit or the annual VAT return to be submitted, thanks to which fully VAT deductibility could be performed¹⁹⁹.

The Community Directive in relation of annual VAT obligation to declare²⁰⁰, explicitly draws up the need for each operator registered for VAT purpose²⁰¹ to submit a VAT statement which includes all the data necessary to determine the amount of VAT payable and that of deductions to be made, including also exempted transactions²⁰².

¹⁹⁹ The Decree Law No. 50/2017 amended Article 19 of the VAT decree, providing that the deadline for exercising the right to deduct VAT related to goods and services purchased or imported can be exercised at the latest with the annual VAT statement for the year in which those transactions have occurred. However, this formulation does not exactly match the new circumstances and criteria set by Article 25, subparagraph 1, Presidential Decree No. 633/1972, which provides for the tax payer's obligation to invoices sequential numbering and recording relating to goods and services purchased or imported in a special accounting book before VAT settling and in any case within the time limit imposed by the National Legislator for submitting the annual statement relating to the specific year the invoice was received. Following the Circular No. 1/E of January 17, 2018, the Revenue Agency has clarified that the time from which the right to deduct VAT could be exercised when this double condition occurs: (a) substantial: VAT chargeability, coinciding with the execution of contracts on the basis of the criteria set out in Article 6, Presidential Decree No. 633/1972; (b) formal: possession of a valid invoice, drawn up in accordance with the provisions of Article 21 of Italian Legislative Decree No. 633/1972.

It is, in fact, from that moment that the taxable person can operate, after invoices recording according to the procedures set out in Article 25, deductibility of the VAT paid with reference to the purchase of goods and services, or to imports of goods.

²⁰⁰ Article 250 of Directive No. 112/2006/EC expressly states that: «*Every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions. 2. Member States shall allow, and may require, the VAT return referred to in paragraph 1 to be submitted by electronic means, in accordance with conditions which they lay down*».

²⁰¹ Operators, who are exempted from the VAT statement submission, are as follows: (a) agricultural producers with revenues below or equal to EUR 7,000, exempted pursuant to Article 34, subparagraph 6; (b) subjects who have registered only exempt transactions pursuant to Article 10, provided that they do not have to carry out VAT adjustments with respect to purchase of depreciable assets pursuant to Article 19-bis2; (c) those who qualify as "light" tax representatives of non-resident persons not identified for VAT purposes in Italy for transactions relating to goods in customs warehouses. Particularly, Article 50-bis, subparagraph 7, of the Decree Law No. 331/1993, referring to Article 44, subparagraph 3 thereof, provides that the manager of the VAT warehouse, for the purpose of fulfilling VAT obligations in lieu of the not residing operator intending to introduce assets into customs warehouse, assumes the role of fiscal representative, so-called "light", as its intervention is limited to the execution of billing obligations and statements of intra-Community transactions disclosure compliance; (d) subjects who engage in activities of entertaining and pay VAT under the special regime referred to in Article 74, subparagraph 6; (e) amateur sports associations, non-profit and grass-roots organizations that apply VAT according to the Law No. 398/1991.

²⁰² On the information to be indicated in the VAT return, Article 251 of Directive 2006/112/EC states that the following information must be included: (a) the total amount, net of VAT, of the supplies of goods referred to in Article 138 and under which the tax became chargeable during that tax period; (b) the total

Regarding the situation in Italy and its regulatory dimension, VAT annual return along with VAT periodic payments, which definitely replaced those monthly statements to be declared to the Fiscal Agency from the beginning of 2002, are the main reporting measures in place with the aim to disclose every entity's debt-credit VAT information.

The annual VAT disclosure obligation can be regarded as the legal tool aimed at examining taxpayer's extent of debt and the "current state of play" of the latter VAT annual position, instead of the regular clearance of VAT accounts which was set up to make assurance that a certain sum of money is to be paid temporarily to the Central State pending the definitive evaluation of every single and specific VAT net position²⁰³.

From the overriding consideration set out above, it seems obviously clear that entries made in the books serve as the instrument to make VAT temporary payments possible and, above all, they are preparatory to drafting of the annual VAT return²⁰⁴. Hence, monthly and quarterly VAT settlements constitute a purely and temporary VAT debt or credit computation to be paid to the Treasury, since only with the annual return the correct balance is measured and determined²⁰⁵.

amount, net of VAT, of the supplies of goods referred to in Articles 33 and 36, carried out in the territory of another Member State under which the tax became chargeable during that fiscal year, whereas the place of goods departure is situated in the Member State where the declaration is to be prepared and submitted; (c) the total amount, net of VAT, of intra-Community purchases of goods and of the similar transactions referred to in Articles 21 and 22, carried out in the Member State in which the VAT return is to be disclosed and for which the tax has become payable during this tax period; (d) the total amount, net of VAT, of the supplies of goods referred to in Articles 33 and 36, made in the Member State in which the VAT statement is to be disclosed and for which the tax became chargeable during that tax period, where the place of departure or shipment of goods is situated in the territory of another Member State; (e) the total amount, net of VAT, of the supplies of goods undertaken in the Member State in which the VAT return is to be submitted for which the taxable person has been designated as the person liable for the tax, in accordance with Article 197, under which the tax became chargeable during that tax period. Article 256 of Directive 2006/112/EC also provides that Member States shall take the necessary measures to ensure that persons who, pursuant to Articles 194 to 197 and Article 204, are considered to be operators liable for payment of VAT in place of a taxable person not established in their specific territory, complies with VAT reporting obligations.

²⁰³ MELIS G., "Lezioni di diritto tributario", Sixth Edition, Torino, 2018, pp. 726 and following.

²⁰⁴ MANDO' G., in "Manuale dell'imposta sul valore aggiunto", Milano, 2011, p. 681 states that VAT annual return, like any statement, shall be primarily the image of truth, and has the task of fiscal reporting to the National Fiscal Agency with the aim at determining the amount of economic operations executed together with VAT, or taxes in general, due, ensuring compliance with legislative requirements: according to book entries of the period, it shall include VAT amount to be cleared or the amount for which deductibility right and refund could be claimed.

²⁰⁵ The Court of Justice, in its Judgement dated 20 October 1993 in case C-10/92, confirmed this general principle, in view of the fact that States may require advance tax payment but not prepayments on unrealized transactions, and it ruled in this Judgment that the National Law which imposed taxable persons to pay a tax VAT amounting to 65% of the total amount due for a period that had not yet elapsed, is deemed

Last but not least, Italian Legislator introduced, along with VAT administrative obligations already existing, a further compulsory duty, provided for by Article 9 of the Presidential Decree of December 7, 2001, n. 435, known as yearly VAT data communication to be sent by the end of February of the year following its specific reference period. A summary of all the transactions and VAT amounts of the year had to be reported in such VAT communication, introduced in order to comply with the provisions of the Community Directive²⁰⁶ which imposes the obligation to send VAT returns no later than two months after the end of each tax period²⁰⁷. This obligation came to fall in 2017, as it was replaced by the new quarterly disclosure of periodic VAT payments communication from January 1, 2017. Legislative Decree n. 193 of 22 October 2016 introduces the new Article 21-bis to Decree n. 78 of 2010, which imposed on those taxpayers registered for VAT purpose the quarterly VAT settlement data disclosure obligation to be submitted to the Revenue Agency.

So, in conclusion, it can be stated that purchase and sale invoice recording has become over time essential for entitling operators to deduct VAT, as it was expressly argued in the previous paragraph of the present work.

From this point of view, the Italian Legislation would seem to go over and beyond what the Community dictates. In fact, with reference to the provision of the Article 242 of Directive 2006/112/EC, it seems that the Community Legislation regards keeping of accounts as purely instrumental not affecting operator's right to deduct. So, continuing this train of thought, Articles 167 and following of Directive 2006/112/EC, under the conditions for the exercise of the right of deduction, do not require to records of purchase invoice.

Nevertheless, on the other hand, the same Article 242 of the Directive in introducing the obligation of sufficiently detailed accounting, states that keep of accounts is necessary to allow control activity by the financial administration and a

to be contrary to Community Legislation. After this ruling, the Italian Legislation has been subject to amendments and currently provides for the obligation to advance payment in relation to the last month (December) or reference quarter (October - November - December) in an amount equal to 88% of the tax paid for the same period of the previous year or which is presumed to be paid for the year.

²⁰⁶ Article 261, subparagraph 1, of the Community Directive 2006/112/EC.

²⁰⁷ Article 252 of the Community Directive 2006/112/EC.

proper VAT mechanism operation.

VAT keeps getting characterized by a complex functioning application scheme and there is the need for a regular evaluation and corroboration activity by comparing all sale and purchase invoices of a given period to get to the fair VAT balance. Intermediate VAT figures calculation, which in Italy is carried out through monthly or quarterly settlements, plays a factually relevant role that is central and substantial for the VAT operation.

It can be argued that accounting by itself is a purely formal obligation²⁰⁸ which does not seem to always address the need for a proper tax model operation which calls for a declaratory support thanks to which « *the taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen*», as it stated in Article 179 of the Directive 2006/112/EC. Italian ruling, which provides for a preliminary invoices recording obligation during the year to deduct VAT, must in any case be considered consistent with the Community model in that it uses quarterly VAT communication and tax staggered payments in order to effectively apply VAT collection scheme.

3.3. Italian challenges at stake: VAT gap, tax compliance and e-invoicing operational matters

The hypothesis of electronic invoicing widespread use within B2B and B2C transactions was made mandatory in Italy in order to introduce an effective tool to fight against VAT fraud. This paragraph intends to provide a general picture of the extent of the fraudulent issue, examining it also from a geographical dimension and a quantitative perspective. The features of the present phenomena and the evolution that it has recently experienced in new markets are subsequently highlighted.

The present paragraph then continues to eviscerate the mechanisms of electronic

²⁰⁸ Article 2214 of Italian Civil Code obliges the entrepreneur who carries out a commercial activity to draw up the journal and the inventory ledger.

invoicing as a tool for combating VAT avoidance but also the problems of an operational nature connected with the use of the electronic document and the transmission through the Interchange System.

The main issue that is highlighted in this paragraph is precisely that of tax evasion, and in particular VAT, which led the National Government and the European Union to introduce electronic invoicing in order to make all economic transactions traceable executed and undertaken by those operators registered for VAT purposes. The basic intention and willingness of the various European Governments, especially for Italy, is that of VAT mechanism, and tax systems in general, streamlining and simplification and that of the marginal compliance costs abatement²⁰⁹, through which they aim to achieve the rate of tax evasion curtailment.

Ideally, when studying such problem, it is interesting and valuable to gain knowledge of the number of people who get away from taxes, how often it happens, how they avoid taxes and the geographical distribution of the amount evaded. Anyway, information about this phenomenon are partly available and can be found in European researches²¹⁰ and in Italian Government's Economic and Financial Affairs Documents issued each year.

Probably, if a survey or a public opinion poll was performed and undertaken of citizens and taxpayers throughout Europe about the reason of tax evasion, the answer would almost certainly be to maximize one's own wealth.

The underlying assumption is that people are willing to commit an offence as long as they are capable to maximize their wealth and usefulness²¹¹. Using the assumption just mentioned to this context, one can imagine a world where individuals are essentially and rationally immoral and unethical decision-makers,

²⁰⁹ Sandford C., Godwin M., Hardwick P., *"Administrative and compliance costs of taxation"*, Fiscal Publications: Bath, 1989, at p. 10 define compliance costs as «*the costs incurred by taxpayers and third parties in meeting the requirements laid upon them in complying with a given structure and level of tax*». Eichfelder S., Vaillancourt F., *"Tax Compliance Costs: A review of cost burdens and cost structures"*, *Review of Public Economics* 111-148, 2014, at p. 133 assessed that these costs are regressive, that is, these costs have significant effect on small businesses growth rate and evolution.

²¹⁰ CASE report, *"Study and reports on the VAT gap in the EU-28 Member States: 2018 final report"*, Warsaw, 2018.

²¹¹ Becker G. S., *"Crime and Punishment: an economic approach"*, in *Journal of Political Economy*, 1968, at p. 169 and following argues that people become criminals or not, not on the basis of different motivations, but on the basis of different costs and benefits.

whose purpose is simply to maximize their usefulness, thus capitalising the maximum benefit possible. A more recent analysis carried out by the Censis Institute²¹², instead, reveals that reasons that would lead evaders to come up with their crimes are the fear of possible sanctions and the urge to get out of a risky and uncertain condition.

The classic Allingham and Sandmo model is a very good illustration of this²¹³. They assume that taxpayers' behaviour is affected by factors such as the amount of tax rates, which determine the benefit of evasion, sanctions and the likelihood of facing a fiscal inspection, the result of which is the imposition of further and additional charges. Individuals, based on these factors, then choose how much revenue to declare and which part to report at the time of submission of VAT and return statements. Allingham and Sandmo's model reports that an increase in the rate of sanctions and the likelihood of being inspected will result in an increase in declared income. In addition, this theory highlights that tax evasion will decrease with a simultaneously increasing of tax rates with sanctions to be calculated on the amount of the evaded tax rather than on the amount of hidden income and with a decreasing risk aversion pattern.

The classical model claims that both the likelihood of being discovered by Fiscal Authorities and the level of strictness of imposing fines are variables which can profoundly affect evasion: if the undergoing assessment is likely to occur and the penalties severe, people will be deterred from evading and "burying" revenues and VAT amounts. Kinsey²¹⁴ argues that, for criminal behaviour in general, sanctions are a less effective deterrent than the likelihood of being discovered; this concept can often be found in the literature on tax compliance²¹⁵.

These considerations give rise to the point that perception of being assessed, influences the behaviour of taxpayers. These theories naturally opened to new

²¹² Censis, "34° rapporto sulla situazione sociale del Paese/2000", 2000.

²¹³ Allingham M.G., Sandmo A., "Income tax evasion: a theoretical analysis", *Journal of Public Economics*, 1972, pp. 323-338.

²¹⁴ Kinsey R., "First Report of the Merseyside Crime Survey", Liverpool, 1984, pp. 35-39.

²¹⁵ Mason R., Calvin L., "A study of admitted income tax evasion", *Law and Society Review*, 13(1), 1978, at pp. 73 and following examined in their study that the highest correlation with confessing tax evasion, results from the perception of the likelihood of not being detected. They have shown that evaders and those operating in the black economy, perceive a lower probability of being discovered compared to other individuals, who on the contrary tend to overestimate it.

studies and research, of which specifically two strands are surely important to be mentioned: the one that follows the game theory, starting from the work of Corchon²¹⁶ reviewed later by Cowell²¹⁷, and the one based on the concept of bounded rationality, whose most important study is certainly that of Kahneman and Tversky²¹⁸.

Electronic invoicing moves in the direction of increasing the probability of interception of the evaded sums and of the companies issuing false invoices.

3.3.1. The VAT gap in Italy and Europe

Value added tax is one of the main sources of revenue for the various European countries²¹⁹. During the last decades, however, the European Union has become increasingly susceptible to evading phenomenon that has impacted on VAT collection scheme operation. It is currently estimated that organized VAT fraud, in the 28 European countries, stands at around 40 and 60 billion euro annually²²⁰. Several attempts have been made to estimate the losses of VAT revenue incurred in individual Member States. The study carried out by the Centre for Social and Economic Research (CASE) and published by the European Commission²²¹ estimates a gap between the theoretically intangible tax and the one actually collected of EUR 147,1 billion in 2016. It estimates that in some European countries this gap may even exceed 20% of VAT revenue: in Italy, in fact, it estimated a gap of 25.9%, i.e. a loss of about EUR 35,9 billion. The estimates of the Ministry of the

²¹⁶ Corchón L. C., "Tax evasion and the underground economy", *European Journal of Political Economy*, Volume 8, 1992, pp. 445-454.

²¹⁷ Cowell F., "Tax sheltering and the cost of evasion", *Oxford Economic Papers*, Volume 42, 1990, pp. 231-243.

²¹⁸ Kahneman D., Tversky A., "Prospect theory: an analysis of decision under risk", *Econometrica*, 1979, pp. 263-291.

²¹⁹ VAT revenue is now the main source of tax revenues related to consumption in the OECD Countries and in 2014 they reached a historical maximum of 6.8% of GDP and 20.1% of total tax revenue, thus forming above 6.6% of GDP and 19.8% of the total tax revenue recorded in 2012. This was confirmed by the study "Consumption tax trend 2016", updated every two years by the OECD Organization.

²²⁰ The Special Report No. 24/2015, "Lotta alle frodi nel campo dell'IVA intracomunitaria: sono necessari ulteriori interventi", on combating intra-Community VAT fraud, published by the Court of Auditors, reproducing what was estimated by Europol, has announced that about 40-60 billion of the annual loss of VAT revenue of the Member States is attributable to organized criminal groups and that 2% of these are at the origin of 80% of the intra-Community frauds of the Missing trade.

²²¹ Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2018_vat_gap_report_en.pdf.

Economy and Finance related to the VAT gap for Italy, present a value slightly lesser than the estimates of the CASE study, attesting it around 26.2%, equal to EUR 34,9 billion²²².

The phenomenon, however, is not uniformly distributed among individual Member States, but varies in every country of the Union, with strong differences between them: in Germany the loss of VAT revenue is estimated at EUR 22.7 billion; in the United Kingdom, similarly to Germany, it can be found a value not exceeding EUR 22 billion; in Bulgaria, the value amounts to only EUR 693 million.

Italy's tax gap position is not among the best in Europe, having been estimated that the phenomenon has been reaching excessive and inflated values since its introduction, and it goes in couple with Slovakia (25.7%), Romania (35.9%), Lithuania (24.52%) and Greece (29.22%). This is symptomatic of the presence of a high number of VAT frauds on the national territory.

3.3.2. The role of invoices issued for fictitious operations and VAT frauds

VAT fraud consists in the violation of Article 1, subparagraph 2 of Directive 2006/112/EC which lays down VAT application mechanism and establishes its operation up to the final stage of sale. VAT multi-phase taxation system matched by a fragmented tax payment and collection operates only if it is correctly applied at every stage of the production cycle until the last downstream operation does not allow for tax deduction. The fraud falls neatly into this mechanism and it works by stopping VAT forward shifting, either failing to pay the VAT due on sales, or failing to invoice to the final consumer or selling goods at prices below the market value or below the original price.

As already mentioned, VAT application mechanism is based on the economic operation correctly invoiced which enables the system, between VAT recovery and deduction, working.

If so, given the principle that invoice substantiates deductibility right exercise in

²²² "Relazione sull'economia non osservata e sull'evasione fiscale e contributiva 2018", available at http://www.mef.gov.it/documenti-allegati/2018/A6 - Relazione_evasione_fiscale_e_contributiva.pdf.

favour of the purchaser, the possibility that the latter could exploit it is not automatic, in the sense that invoice receiving does not immediately legitimate the taxpayer to deduct VAT.

Specifically, let's think about the cases in which the invoice involves economic operations not carried out in accordance with terms described therein or not actually occurred at all, because of failures in the execution of operation.

These phenomena can be qualified as those that have the purpose of evading VAT with a methodology through which a national operator intending to buy goods from an operator located in another Member State artificially gives birth to a third party fictitiously standing between the two real economic entities.

Under the terms of such an imposition mechanism, the interposed subject becomes the principal tax debtor and after having carried out a really high number of economic transactions within a limited period of time while having gathered and accrued a considerable VAT debt, the company decides to go missing, without complying with VAT payment and clearance obligations. Of course, it throws uncertainty on the legitimisation of VAT deduction exercised by the purchaser precisely because it relates to a VAT total which the seller wouldn't settle to the Fiscal Agency, although it has been charged to recover VAT. Within this framework, the issue that emerges is closely linked to the existence of VAT deduction right in the hands of purchaser, since Article 21, subparagraph 7, of Presidential Decree n. 633/1972, outlines solely that VAT charged on non-existent operations, in any case, must be paid and settled by the seller.

Given that, the possibility of VAT deductibility is conditional not only upon the requirement of the invoice possession, but also upon the actual execution of operations, the National Jurisprudence, in accordance with the Community Law orientation, continues to confirm the effective recognition of the right to deduct by the transferee who acted in good faith in a carousel fraud²²³. This case-law is absolutely consistent with the train of thought and Judgments of the European

²²³ Giovanardi A., *"Le frodi IVA. Profili ricostruttivi"*, Torino, 2013, pp. 45 and following. Principles of legitimacy of VAT deduction acting in good faith can be found in: Italian Cassation Court's Judgment No. 10147 of 12 May 2012; Italian Cassation Court's Judgment No. 8132 of 11 April 2011; Italian Cassation Court's Judgment No. 24965 of 10 December 2010.

Union Court of Justice, which has repeatedly stated that the right of a person to deduct VAT, paid on goods or services purchased, cannot be affected by the fact that the transaction is part of a VAT fraud mechanism, if purchaser wouldn't have been able to know that²²⁴. Therefore, with reference to purchase invoices, it follows from above that the non-deductibility of input VAT on the purchase of goods or services sticks at the time when the operator registered for VAT purposes does not demonstrate the good faith.

Specifically, the mechanism that is established by the tax evaders to obtain fiscal advantage and which will be discovered more easily with the introduction and using of electronic invoicing, is that of carousel fraud, characterized by the presence of some typical elements: (a) issuing of invoices related to non-existent operations between companies belonging to different Member States; (b) non-payment of VAT to one of the stages of fraud; (c) fictitious VAT deductions for the other participants of the fraud; (d) undue VAT refunds when goods are resold in further EU transactions. The weakness of the VAT system, which allows the spread of frauds, is therefore found in the current particular taxation regime of intra-Community transactions according to the principle of taxation in the destination country, which forces the purchaser to integrate the invoice with the tax due and settle VAT on behalf of the seller²²⁵.

²²⁴ It can be invoked Halifax Judgment (Court of Justice EU, 21 February 2006, n. 212, case C-255-02), pronounced with reference to a case of presumed triangulation of real estate services carried out within a banking group. It has been stated that in the VAT field, transactions must be treated in the same way as they come under the formal legal profile and therefore, if examined in this respect, they result in the notion of supply of goods or services, must be subject to the relevant regime, without the Administration being free to review any additional specific purposes pursued with the transactions carried out, and therefore including the event of fake economic operations with the purpose of tax advantage.

Therefore, the Court considers that the deductibility of VAT paid on purchases must be limited only in cases where the transactions carried out have the aim to gain and secure a tax advantage, that is, in this case, a reduction in VAT payable that otherwise it would not have been possible to achieve. If there is no question on the objective effectiveness of the operation, the same must be considered fully included in the scope of VAT mechanism and therefore subject to the its regime, including that concerning the VAT deductibility of VAT settled by the buyer.

In other words, the Judgment of the Court of Justice clarifies the principle according to which no objections can be raised in the VAT field only because certain operations, absolutely regular from the formal point of view of VAT application, have been put in place to achieve goals that have their own effects in a completely different field compared to that of VAT. There must therefore be both the evidence of an involvement of the buyer within the fraud mechanism and the awareness that its economic advantage derives from the tax fraud implemented by the operator.

²²⁵ On the point see: Aronowitz A. A., Laagland D.C.G., Paulides G., *"Value-added tax fraud in the European Union"*, Amsterdam, 1996. House of Lords, *"Stopping the Carousel: Missing Trader Fraud in the EU"*, London, 2007, available at <https://publications.parliament.uk/pa/ld200607/ldselect/ldecom/101/101.pdf>.

Principle of VAT neutrality is ensured as the economic operator could offset the VAT liability accrued with the right to deduct value added tax in the country where it is established. Goods would fall within the ordinary VAT chargeability and deductibility mechanism only when those items are then resold in the national country. The carousel fraud would be achieved by the intervention of a taxable national VAT operator between the non-resident Community supplier and the national consignee, in such a way that the former, due to the intra-Community nature of the transaction, is not forced to pay VAT to its supplier and, at the same time, refuses to pay the VAT charged to the domestic purchaser, who has the right to deduct VAT.

In other words, having purchased from non-resident Community operators, so as not to be forced to pay VAT to the supplier recovering VAT, this company sells the goods to domestic economic operators without settling VAT: this is conceived in order to allow for VAT partition among parties involved.

The main feature of the fraud in question shall be identified in the intention to include have-nots or persons who have nothing in the commercial chain, or more frequently, of normally shell companies to realize the fraudulent mechanisms, which is to be kept alive for a short period of time, sometimes just enough to finalise fake operations²²⁶.

The carousel fraud is characterized in some cases by a just on paper round of goods, that means no real economic operation has occurred. In short, simulation of commercial operation is aimed at establishing both the right to recover VAT on the side of the national supplier and the right to claim VAT deduction or VAT refund on the side of the national purchaser.

It is for this reason that National and European Legislation has evolved in order to counteract these mechanisms of fraud and improper fiscal advantage over the years. Particularly, the legal basis which describes conducts that should be subjected to criminal penalties and indications of the actions which should be regarded as criminal offences are found in Legislative Decree n. 74/2000, specifically in Articles n. 2, containing rules on fraudulent declaration through the

²²⁶ Martinelli A., *“Come difendersi dal fisco in giudizio”*, Santarcangelo di Romagna, 2009, pp. 386-387.

use of invoices or other documents for non-existent transactions, n. 3 and 4, containing rules on fraudulent and unfaithful declaration, n. 8, containing rules on issue of invoices or other documents for non-existent transactions, n. 10-ter, containing rules on omitted payment of VAT. It is also worth remembering Penal Code rules of Articles 640 on scam crime, 640-bis on major fraud in case it is aimed at obtaining public grants and concessions, and 15 containing the principle of specialty regime, where it is provided that the special legal provision prevails over the general law governing the same subject, also referred to in Article 19 of Legislative Decree n. 74/2000²²⁷.

Recently, the Italian Government has presented to the Chamber of Deputies the Delegation to the Government for the implementation of European Directives and the implementation of other European Union acts 2018 draft law²²⁸. The aforementioned draft law was approved by the Chamber of Deputies on 13 November 2018 and was submitted to the Senate on 14 November 2018.

Article 3 of the draft law contains the guiding principles and criteria for implementing European Directive n. 1371/2017 «*on the fight against fraud to the Union's financial interests by means of criminal law*», which has as its object the establishment of «*minimum rules concerning the definition of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the Union's financial interests*»²²⁹, leaving the Member States free to «*adopt or maintain more stringent rules for criminal offences affecting the Union's financial interests*»²³⁰. The notion of "financial interests" is contained in Article 2, subparagraph 1, letter a) of the present Directive and refers to «*all revenues, expenditure and assets covered by, acquired through, or due to the Union budget, the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored*

²²⁷ Mereu A., "La repressione penale delle frodi IVA. Indagine ricostruttiva e prospettive di riforma", Milano, 2011, pp. 22-39.

²²⁸ It consists of 22 Articles, which contain provisions concerning the implementation of 22 European Directives included in Annex A, as well as the adaptation of National Legislation to 9 European Regulations. The Article also contains principles and specific guidelines for the exercise of the delegation relating to 12 directives.

²²⁹ Article 1 of EU Directive No. 2017/1371 of 5th July 2017.

²³⁰ Recital 16 of EU Directive No. 2017/1371 of 5th July 2017.

*by them»*²³¹.

Subparagraph 2 of the same Article is of great importance as well, since sets out a disclaimer limiting the extensive scope of the PIF Directive, which applies to VAT infringements which are to be regarded as serious. The concept of severity is defined having regard to the cross-border nature of the unlawful behaviour and the high total damage.

3.3.3. E-invoicing, between benefits in the fight against VAT evasion and operational constraints

3.3.3.1. Procedural matters and invoice variation notes

As already stated and described in the previous chapter, electronic invoicing, in addition to bringing expected benefits from the point of view of simplification and record keeping, has characterized some technical aspects that affect the right to deduct VAT. In particular, it has already been noted that the Revenue Agency has underlined that the date of issue of the electronic invoice is the date shown in the "*Data*" field of the "*DatiGenerali*" section of the electronic file, which is to be considered compulsory in accordance with Articles 21 and 21-bis of Presidential Decree n. 633/1972, which allows to determine the exact period of VAT deductibility. In other words, the invoice if promptly sent to the Interchange System followed by no rejection, which still entails the possibility of a new issuing within the following 5 days, the processing times (i.e. delivery/making available to the customer) required by System may be considered to be marginal, since only the date in which the electronic file is drafted and sent to the System becomes crucial for VAT deductibility reasons. With regard to the immediate invoice, Article 11 of Decree Law n. 119 of October 23, 2018 admits operators registered for VAT purposes to defer invoice submission up to the 10th day after the transaction performed.

²³¹ Article 2, subparagraph 1, letter a), of EU Directive No. 2017/1371 of 5th July 2017.

As required by provision n. 89757 of April 30, 2018, the Interchange System performs the necessary checks for each file received and, in the event of failure to comply with standard drafting provisions, within 5 days from the date of transmission, a notice of rejection will be sent. Similarly, the invoice, although formally correct, is rejected where a non-existent recipient's code is used. In such cases, the electronic invoice rejected by the Interchange System is regarded as not issued and, if the seller has already recorded the document in the books, it involves an accounting variation which only applies to internal accounts, without transmission of any variation note to the Interchange System.

Reading the circular n. 13/E/2018, the Revenue Agency indicates, as the first preferable solution, the one to proceed, within 5 days after the notice of rejection, issuing a new invoice keeping the same serial number and date, accordingly with regard to the original invoice. It will not constitute a duplication of an existing invoice, given the fact that the previous one had been rejected and, therefore, not issued. In order to guarantee compliance with the invoice uniqueness principle, the Interchange System makes sure that e-file already transmitted and processed, will be rejected, except when a note of rejection, as result of an incorrect document submission, has been sent to the transmitting subject.

If it is not possible to send an invoice with the same number and date as the rejected one, the Revenue Agency provides for two possible alternatives, to be followed to rectify the incorrect invoice: (a) in the first case, the taxpayer can issue a document with a new number and date providing for the necessary link to the previous invoice rejected by the Interchange System and reverse the latter with internal accounting variation in parallel, to make clear the timeliness of the invoice in relation to the transaction whose evidence must be given. This invoice must have number and date consistently with the additional invoices issued in the time elapsed since the original invoice was submitted. (b) In the second case, the taxpayer will always issue a new document, but using specific sequential numbering showing that it is a rectifying document of the previous one.

It's different the circumstance where the economic operator realize that the e-file previously issued is wrong, already accepted by the Interchange System and then

forwarded to the recipient. In the provision of the Revenue Agency n. 89757, it has been specified that the electronic invoice process is also applicable for increasing or decreasing notes, issued pursuant to Presidential Decree n. 633/1972. Therefore, the seller who has to rectify the taxable base or the tax after the invoice has been issued, he will be required to issue a variation note which will necessarily have to be transmitted through the Interchange System. The rules set out above arise from the consideration that invoices already submitted through the Interchange System are physically un-editable, nor can be integrated. In this regard, in fact, the Revenue Agency suggests to prepare a further document to be attached to the invoice if there is a need to integrate the document with further information.

The possibility to rectify and correct material errors, even with regard to invoicing process, is generally recognized by the Tax Section of the Court of Cassation, which highlights that the national tax system assume that the source of the tax obligation cannot find unique and alone foundation in the taxpayer's behaviour²³². The community provision, contained in Article 203 of the Council Directive n. 2006/112, according to which VAT is due by anyone who indicates the amount of the letter in the invoice, it must be interpreted in the context of the overall tax enforcement mechanism. For instance, VAT subjugation of exempted transactions, by the simple fact of VAT computing and charging in the invoice, is a problem that has already been overridden by the Community Court of Justice²³³. This in order to give less importance to the formal data indicated in the invoice and to grant more freedom on interpretative positions of the document issued. It is essential to highlight that the exercise of the right of VAT deductibility cannot be extended exclusively for being indicated on the purchase invoice, since if any VAT amount which appears on the invoice, would be deductible, it would be easier evade taxes, naturally regardless substantive requirements which makes every transaction strictly legal. To confirm this, VAT Directive, as already highlighted above, defines the invoice

²³² In this regard, the United Sections of the Court of Cassation, with the Judgment of 25 October 2002, n. 15063 consider the thesis that it is possible to amend any tax declaration that is, in any case, the result of taxpayer's mistake which potentially may bring to different, and more burdensome, contributory charges than those which must be borne by law. On the point see Amatucci F., *"Principi e nozioni di diritto tributario"*, 2nd edition, Turin, 2013, p. 367-369.

²³³ EC Court of Justice, Judgement of 13 December 1989, case C-342/87.

nature and play as purely instrumental for the exercise of the right to deduct VAT which is subject to the existence of its specific substantial conditions.

VAT notes of variation are theoretically identifiable with respect to their sign: increasing and decreasing, as is clear from the provision referred to in Article 26 of the Presidential Decree n. 633/1973. Increasing variation note is found in all the cases in which the original transaction is affected by an error whose result is expressed in an underestimation of the tax base or the tax applied, or in the hypothesis in which the occurrence of an event subsequent involves an integration of the price previously agreed between the parties. The debit note issued in this way must be noted in the register of invoices issued within 15 days from the date included in the same document. The aforementioned conclusions are also applicable to decreasing note of variation²³⁴, without prejudice to the fact that individual events that give rise to the necessary change in the two cases may differ, given that, for example, the cancellation of an operation can only have diminishing effects, while, as noted, generic changes in the original price could affect both ways.

3.3.3.2. Faster tax assessment and audit procedures

The Presidential Decree of 29 September 1973, n. 600 introduced the tax return with the aim of implementing a new general tax collection mechanism that would facilitate tax controls audit activities. Another important evolution was that promoted and fostered by the entry into force of the Legislative Decree n. 241 of 9 July 1997 in parallel with the Presidential Decree n. 322 of 22 July 1998 that have (a) gathered in a single document the returns related to income tax, IRAP and VAT; (b) introduced the obligation for each taxpayer to prepare and present the declaration using telematic and IT technologies. This was conceived by the National Legislator in order to (a) shorten the terms of acquisition of taxpayers' returns; (b) avoid that the data communicated for the purposes of the different taxes were

²³⁴ The national discipline is based on the Community discipline: the provision is set out in Article 90 of Directive 2006/112 / EC which states that: «*In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by the Member States*».

different and (c) to standardize and accelerate the verification and control activities of the tax agencies²³⁵.

Control and monitoring activities carried out by the tax agencies can be identified in the automated ones, performed on tax statements electronically sent, or in the formal ones carried out on specific declarations by comparing against the documentation kept by the tax payer.

Those which warrant special attention for the present work, are the automated ones, which consist in an electronic procedure for calculating taxes, on the basis of data and elements directly deducible from the declarations and those resulting from the central tax register²³⁶. Automated control is made possible by the introduction of telematic systems enabling returns submission and the Interchange System for electronic invoices dealing and transmission with the Public Administration and within B2B and B2C operations. This procedure immediately makes available the information contained in them, allowing the tax authorities to perform a much faster check by means of IT and cross-checking procedures. The electronic invoicing measure aims to strengthen the tax administration's ability to effectively prevent and combat tax evasion and VAT fraud, as well as to encourage voluntary compliance.

From this point of view, among the most important aspects of the monitoring activity for VAT purposes, boosted and powered by the electronic invoicing requirement, a central role is certainly played by those concerning the right to deduct and make VAT payments. This type of control aims to verify that the taxpayer, in carrying out the calculations for VAT periodic (monthly or quarterly) settlements, to be carried out in accordance with the terms of Article 1, subparagraph 1, of the Presidential Decree March 23, 1998, n. 100, took into account all the annotations made or to be made in the accounting records of issued sale invoices issued or receipts, from which arises the true VAT payable amount.

In this regard, the fiscal assessment activity must concern: (a) the tax resulting from the invoices issued during the period to which the settlement refers, regardless of

²³⁵ Montalcini F., Sacchetto C., "*Diritto tributario telematico*", 2nd edition, Turin, 2017, pp. 37-38.

²³⁶ Pursuant to Article 54-bis of Presidential Decree No. 633/1972.

the date of annotation in the specific book, in the case of immediate invoices; (b) the tax relating to the goods delivered or shipped during the period to which the settlement refers, in the case of deferred invoices; (c) the tax collected in the period to which the settlement refers, for deferred invoices; (d) the tax collected in the period covered by the settlement for immediate invoices²³⁷. The match between the real tax calculated by the Fiscal Agency, after receiving the electronic invoices and taxpayers' periodic payments amount, is aimed at capturing the actual and total VAT payment made by the tax payer, resulting from VAT quarterly communications and from the annual VAT return. The expected effect is the reduction of evasion from failure to declare, with a positive effect on tax revenues, due to the elimination of the evasive phenomena counteracted by the electronic measure, estimated prudentially equal to at least EUR 2.05 billion²³⁸.

With specific regard to "paper mills", also known as "fictitious companies" or "missing traders", they are characterized by limited operations over time, the sudden growth in turnover, as well as the absence of real offices at the declared places and, frequently, by the unavailability of the necessary means to carry out the declared economic and business activity. In this context, electronic invoicing aims to reduce the time period between invoicing, declaration and recovery of the higher tax eventually due or not paid by the company, so as to allow a timely fighting action against VAT fraud. This tool provides information about the sales or services of intra-community operations, made by companies established between the national commercial operator and the one located in another Member State, each one kept under control by the tax authorities.

When the automatic checks operated reveal inconsistencies between the elements declared, settled and in the possession of the tax authorities, the Revenue Agency will then send reports on checks conducted to the taxpayer, pursuant to Article 54-bis, subparagraph 3 of the Presidential Decree n. 633/1972 and in compliance with the taxpayers' Statute.

²³⁷ Comando Generale della Guardia di Finanza, Circular n. 1/2018 titled "*Manuale operativo in materia di contrasto all'evasione e alle frodi fiscali*".

²³⁸ "*Relazione sull'economia non osservata e sull'evasione fiscale e contributiva 2018*", cited above.

Conclusion and final thoughts: the future of VAT in Europe and the new intra-Community operations regime

The reason why the current VAT system needs to be revised lies in the fact that this tax was introduced in Europe almost 50 years ago at a time when the market was very different from the one at the present time. Although changes have been made over the years to try to modernize and simplify the system, the regime is no longer suited to the needs of a modern and ever-changing economy, characterized by globalization and based above all on technological innovation. The complexity of this European framework gives rise to ongoing costs and charges regarded as unnecessary for taxpayers or administrations and which represent an obstacle to the market growth. Moreover, complexity makes the system easily vulnerable to fraud and evasion. Fraud is an important aspect in terms of forgone VAT revenues. More effective and modern methods must be implemented to counter fraud, but also to evaluate a new mechanisms of VAT collection and fiscal assessment, given the rules in place have remained unchanged for a long time since VAT was introduced.

In recent years, Europe has proposed a definitive system with the aim of regulating cross-border transactions for value added tax purposes. The novelty is that within a few years, and precisely in 2022, there will be a new method of imposing intra-community transactions, centred on the One-Stop Shop Mechanism, already in place and functioning for digital services provided to European consumers.

The idea of allowing an economic operator to deal exclusively with one of the financial administrations of the Member States of the Union through the One Stop Shop Mechanism is therefore the heart of the future evolution of the VAT system towards the new definitive regime. Although the main goal of the VAT framework reform is to achieve a uniform taxation of intra-Union operations that addresses the principle of taxation in the destination country, it is undisputed that it is precisely through the mechanism of the One-Stop Shop with which the need to streamline the VAT application mechanism and find a suitable solution to the intra-Community frauds could be achieved.

The new definitive system based on the application of the One Stop Shop

Mechanism has the task of replacing the current temporary VAT regime which was one of the main causes that made the VAT unfit to keep up with the challenges of the globalized economy at present. Besides being susceptible to fraud, the transitional regime is also fragmented and complex due to the growing number of cross-border companies where national and intra-Community transactions are treated unequally.

The option and opportunity of exploiting a VAT collection mechanism, in all the intra-European operations, building on the (M)OSS mechanism is not a completely new element in the community debate. There are, in fact, also some dated studies of the European Commission in which it shows the advantages of a wider One-Stop-Shop system, in the belief that this tool could simplify tax obligations for a higher than operators²³⁹.

However, the most important development in this direction came from the conclusions reached by the Commission in the VAT action plan of 7 April 2016, as set out in COM (2016) 148 final. On that occasion, the Community legislative initiative made it clear that the future of the tax, and consequently also of the Community market, will be marked by the implementation of a definitive system focusing on the application of the One-Stop Shop Mechanism. As it has also been emphasized within the proposal, it will follow a gradual change, which will extend the (M)OSS mechanism to all the Community operations, starting with the exchanges towards private consumers (B2C) up to include all the cases existing in the current transitional regime.

Among the most recent Council Directives concerning this theme, it is worth mentioning that n. 2455 of 2017²⁴⁰, which can be regarded as a fundamental and

²³⁹ Reading the Proposal for a Council Directive COM (2004) 728 final of 29 October 2004, it is said that: «The Commission is convinced that the one-stop model could simplify tax obligations for a considerable larger number of traders than it does today. On the basis of information received from Member States, the Commission estimates that there are currently in the region of 250,000 VAT registrations in the European Union which relate to traders established in other Member States. In particular, EU businesses carrying out cross-border activities for which they become liable to pay VAT in Member States where they have no physical presence could benefit from the more extensive use of such a system. Taxable persons covered by the distance selling arrangements are certainly one of the main categories of businesses concerned. However, it could also be used for other transactions, in particular supplies involving installation or assembly, work on immovable property, removals, sales at exhibitions, fairs or markets, etc».

²⁴⁰ Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.

significant step towards the definitive regime, which is to be accomplished through the extension of the One-Stop-Shop discipline in the territory of the European Union, currently envisaged in the area of electronic commerce and telecommunications and broadcasting services.

At the same time, according to the Proposal for a Council Directive COM (2017) 569²⁴¹ and the two latest proposals for new Council Directives²⁴², the reform process that introduces the (M)OSS, as above mentioned, should also involve other types of intra-Community operations. In this context, the recently Council's Directive n. 2018/1910 referred to in document COM (2017) 0251, thus represents a successful outcome of a protracted process in which the role of the Commission was that to ensure transitional regime to be replaced by a definitive regime less vulnerable to fraud. The reasons aforementioned which made the replacement of the current system essential, which provides for VAT supply of goods exemption in the Member State of departure and the imposition of the intra-Community acquisition of goods in the Member State of destination, have led to consider a single performance system (MOSS), subject to tax in the Member State of destination according to the VAT rates of the same. Within the new VAT application system, it will be up to the seller to charge VAT, who will be able to check online the applicable rate of each Member State through a web portal. However, if the purchaser is a certified taxable person (i.e. a reliable tax payer, recognized as such by the Member States), the reverse charge mechanism will continue to apply. The system of definitive VAT will therefore be based on the concept of a single registration system (One-Stop Shop) for companies that allows for payment, but also VAT deduction, directly in the Member State of identification even if the tax will be collected in the destination country.

As a general rule, therefore, the definitive system will be based essentially on two fundamental guidelines identified by, on one hand, in the taxation to destination

²⁴¹ Proposal for a Council Directive, on the introduction of the definitive system for the taxation of trade between Member States.

²⁴² Proposal for a Council Directive COM (2018) 329 final of 25 May 2018, amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States and Proposal for a Council Directive COM(2018) 20 final of 18 January 2018, amending Directive 2006/112/EC as regards rates of value added tax.

of intra-Community supplies of goods and, on the other, in the responsibility of the seller for the collection of the VAT of the destination country, whose mechanism in the transitional regime was instead assigned to the Community purchaser through the reverse charge regime. With the revision of the definitive transitional system, intra-Union cross-border sales of goods will be invoiced by the supplier, charging VAT to the customer with the rate of the Member State of destination; VAT will then have to be declared and settled via the One-Stop Shop in the country where the supplier is located. This reform project, which will soon assume the nature of a legislative act of the European Union, is aimed at ensuring greater consistency and simplicity, from the point of view of tax treatment, for the economic transactions that are put in place between Community taxable persons and above all, it should make the VAT system resistant to intra-Community frauds, which in the current reverse charge regime have developed giving rise to several illegal behaviour that unduly qualify national operations as intra-Community supplies, in order to benefit from tax exemption, even in the most serious forms of carousel fraud.

Chapter 4

The evolutionary model within accountant and consultant offices

Over the past several years, the national business landscape, due to the deep internal crisis conjointly with the rapid growth of other countries contributing to the decline in domestic demand, has led to a strong and striking dismantling of small and medium-sized enterprises, thus indirectly investing also professional firms. The dynamics that are characterizing tax advisors' offices market are constantly changing, on the one hand due to the growing requests for need and help from companies, and on the other for the rapid change in the set of tax and legislative rules. Professional firms have been given better lives up to now, thanks to customer soundness and on the fact that fiscal services offered by them were obliged by the National Legislation, which every company must not disregard. Traditional service activities, including accounting, are gradually losing marginality and productivity, being subjected to increasingly strong competition among the various national operators. Moreover, since accounting and tax services are increasingly perceived as an imposition and a coercion, the added value perceived by companies is no longer linked to good tax advice but to activities more closely linked to strategic, financial management and development of entrepreneurial activity. In this context, companies are increasingly demanding the presence and intervention of professional figures ready to offer answers and effective solutions in the production and commercial sectors. This emphasizes the need to expand the range of services offered by the professional firm, structuring them so as not to make them and their sustainability, highly dependent on bookkeeping revenues. The introduction of the generalized obligation of electronic invoicing will have different impacts on the activities traditionally carried out by professional firms, given that on the one hand there will be a strong push towards the automation of accounting records in management systems, on the other there are all the prerequisites to encourage a greater disintermediation process with the final user.

Electronic invoicing is one of the first steps towards greater tax simplification, which over the years will entail a greater independence and proficiency of the Revenue Agency in VAT settlements and annual VAT and income declarations arrangements. Of course, in the first few years, the discrepancy between the drafts proposed by the Agency and the amount calculated by tax advisors or taxpayers will be such as to justify the costs of keeping the accounts according to traditional logics, especially with reference to income tax returns if there were any costs not certified by invoices submitted to the Interchange System. But it is clear that what has just been mentioned constitutes an essential step in the digital evolution process that the tax administration and intermediaries are experiencing. The use of artificial intelligence tools fed by past declarations and applied to electronic invoice data passing through the Interchange System can lay the foundations for internal and efficient organizational improvement among professional firms.

With the generalized obligation of the electronic invoice, the Revenue Agency has radically changed its business operating model, since it will acquire tax data and information included in the invoices directly by the tax payer via the use of the Interchange System. Professional firms will have to revise their business model in order to become themselves issuers and recipients of electronic invoices on behalf of their clients demonstrating that using the digital services for invoices made available by the Revenue Agency, it would not allow the data contained in the electronic invoices to be actually exploited.

At the same time, the obligation of electronic invoicing has an impact on the operating model of accounting keeping within the firm's organization, since the traditional activity of acquiring paper invoices and recording will be reduced and limited in time by means of ICT systems. In the following activities, some of the main causes of internal organizational impact can be identified: (a) production and processing of electronic invoices, when the professional firm decides to provide support to customers with a low knowledge of information technology in the drafting process of invoices. It will, therefore, be necessary to estimate and identify the necessary resources to devote to the aforesaid activity, having precise information regarding customers, the number of invoices issued per year by each

customer and the average time necessary for processing and sending to the Interchange System; (b) verification of the invoices issued, since the professional firm could provide an invoice verification service before they are transmitted to the Interchange System. It will be essential to estimate the resources necessary to devote to the control activity here as well; (c) invoices received monitoring, which consists of reconciling activities with the payments made or the commercial agreements defined by the end customer with its users; (d) semi-automatic and assisted registration of sale and purchase invoices which turns into cost saving in terms of data entry in the accounts. In fact, the keeping of the accounts is facilitated by the automatic mechanism of acknowledgment of information included in the invoice and rapidly joining the customer's specific chart of accounts.

With regard to these last aspects, this chapter intends to address the different organizational models of management of the electronic invoicing cycle and measure the greater efficiency induced in the operation of the accounting department of professional firms, with an immediate reflection also on the management and unitary costs of an invoice.

The digital evolution of the professional firm must therefore start from these considerations and follow a path of transformation useful to preserve the role of fiscal intermediary exploiting the opportunity of strategic evolution for the end customer that this new obligation is bringing out.

4.1. Invoices dematerialization and organizational matters

The term "dematerialization" means the consequence of the gradual replacement of paper documents in place of IT documents, obtained through the carefully evaluated digitization of existing paper documents, and from the promotion of original IT documents drafting²⁴³. The word dematerialization has only recently been using in legislative and regulatory texts and in those provisions regarding document management within Public Administration offices; in fact, it has become

²⁴³ "La dematerializzazione della documentazione amministrativa. Libro Bianco del Gruppo di Lavoro interministeriale per la dematerializzazione della documentazione tramite supporto digitale", CNIPA Publication, 2006.

part of the common language in recent times, with reference to administrative documents management with full legal value. Particularly, the theme of documentary digitalisation has become highly topical and has encouraged the debate within this field among operators following the entry into force of the Digital Administration Code in 2005, in which several measures were put forth aimed at implementing the transformation and changing process that would have led to the paper files replacement and substitution within Public Administrations. This term therefore has a strong evocative value, which would draw attention to the intangible and non-visible nature of digital papers instead of those paper-based²⁴⁴.

IT document means the electronic representation of acts, facts or legally relevant data²⁴⁵, that is, in most cases, documents that are born or are converted into a digital format. In comparison with an analogue document, an IT document is renowned for its characteristics of greater flexibility, reproducibility, transmissibility and interactivity. This is also the reason why the Legislator has been encouraging in recent years the use of this type of format in place of paper, entrusting it with full legal value²⁴⁶ and requiring administrations to reorganize their workflows with a digital approach²⁴⁷. However, dematerialization cannot simply cover the realization and implementation of a process of documents digitization, produced by an organization. In fact, it shall involve the whole sphere of processes reorganization and simplification, allocation of responsibilities, closer interaction with internal and external stakeholders through the use of technological tools.

Primarily, it is important to made a distinction between the dematerialization of pre-existing paper documents and the entirely originally digital invoices and documents creation and management.

By digitization in a broad sense, it shall be understood as the process that transforms data and information into a series of electrical or electromagnetic signals that can be read and translated by computers, and includes the

²⁴⁴ See note 237.

²⁴⁵ Article 1, subparagraph p), of Legislative Decree No. 235/10.

²⁴⁶ Article 20, of Legislative Decree No. 235/10.

²⁴⁷ Article 23-ter, of Legislative Decree No. 235/10.

implementation of management and storage tools through modern ICT systems. The concept of dematerialization is instead specifically related to the replacement of paper-based file with digital media²⁴⁸.

The transition from hard copy to paperless procedures is a critical and delicate moment for professional firms and companies, which requires a careful assessment on the feasibility, IT structure and managerial and computer skills owned by human resources. The analysis aimed to migrate from a paper to a digital administering represents the dynamic aspect of the phenomenon and the transition moment with the problems deriving from it. Dematerialization should be seen as a change of cultural and psychological nature felt by organizations and human resources, first of all by the management which has suggested and approved the plan for digital changing, and represents the initial moment of change, the reasons for which are often attributable to economic or structural revision and organizational reconsideration. If one were to take a look at documentary-management process in an organizational perspective, whether in traditional or digital form, it is of key importance to take into account those elements that are most involved, both in the design phase and while rethink the operational models of the organization. These elements may be directly involved, such as the Corporate Information System, or indirectly, such as the management of relations with internal and external stakeholders²⁴⁹. These are organizational choices made by the management, which concern the Corporate Information System in the first place, and which have reflection and impact on human resources being and working methods, and on economic, organizational, social and environmental issues for the company as a whole.

Naturally, these elements are strictly interdependent, they influence each other in an iterative manner. From an organizational point of view²⁵⁰, it should be noted that IT implementations can often lead to a substitution of manual tasks and

²⁴⁸ Raimondi R., *"Dai documenti al social web. L'informazione al centro del business"*, Milano, 2012, p.24.

²⁴⁹ Lee and Lim define a system of electronic data exchange as a computer-to-computer form of inter-organizational electronic commerce through which the company communicates and trades with its business partners and establishes and maintains commercial relationships. Lee S., Lim G.G., *"The impact of partnership attributes on EDI implementation success"*, in *Information & Management*, Volume 42, Issue 4, 2005, pp. 503-516.

²⁵⁰ Draft R.L., *"Organizzazione aziendale"*, Santarcangelo di Romagna, 2014, pp. 247 and following.

activities with the corresponding automated activities performed by computers and machines. This is positively perceived by management with a view to savings and process optimization, while on the operational side the fear is that their work can be replaced with semi or totally automated systems. Naturally, it is not a new concept in the organizational field, but it certainly continues to raise problems related to the retraining of personnel or their redundancy, and the resulting dismissal. The most significant impacts are therefore generated thanks, firstly, to the low added value activities abolition, which allow a rethinking of the processes and therefore their redesign on new bases, bringing to significant increases in terms of effectiveness²⁵¹, and subsequently by dint of the new document management planning.

With exclusively reference to dematerialization *stricto sensu*, here understood as that process by which professional organizations move from managing paper-based documents to a predominantly digital approach, the organizational benefits in terms of the effects of change are evident, particularly in time reducing and contraction within formulation and communication of decisions processes, due to the faster availability of data and information: this allows the company or the professional firm to have a leaner structure, and to make decisions more quickly, and that way the whole organization actually becomes more ready to adapt to the fast-changing external environment.

Paper to digital management changing goal, from an organizational point of view, should be seen in terms of pursuing greater business dynamism and flexibility, factors that are increasingly relevant in the current competition. To overcome resistance, a collaborative climate is necessary, and training of human resources is needed to enable them to face new technological challenges and to adapt all organizational levels to digital and e-invoicing changes²⁵².

Digital illiteracy²⁵³, i.e. the lack of ICT skills, is a phenomenon of a still wide scope,

²⁵¹ On the point see Meloni G., *“Agire in digitale. Casi aziendali di dematerializzazione e semplificazione dei processi di business”*, Milano, 2012.

²⁵² Haag S. et al., *“Organizational resistance to E-Invoicing – Results from an Empirical Investigation among SMEs”*, in Electronic Government EGOV 2013, Koblenz, Germany, pp. 286-297.

²⁵³ On the point see Sinibaldi A., Buongiorno P.B., *“Manuale di conservazione digitale”*, Milano, 2012, pp. 11 and following.

not to be underestimated as a cause of failure of reorganization processes. Daft sets out two elements²⁵⁴ that can help explain the impact of technology on employees: (a) the planning of the task; (b) and the socio-technical systems. Task design establishes what the actual duties of the worker are. It is up to the management to establish these tasks or change them over time. Some changes are planned explicitly (for example, job rotation), others are the consequence of other factors, such as the introduction of new technologies: this can lead to a change of tasks, which therefore may feel threatened. Two cases can be distinguished: that of mass production technologies and that of advanced technologies. Mass production technologies would lead to a simplification of tasks, hence greater repetition, more alienation, but advanced technologies, such as those intended for e-invoicing, would be a vehicle for enrichment and job enlargement themselves. The term "socio-technical systems" refers to the approach that evaluates the interaction of the two components embedded in the system and their needs. The social system is given by human resources, while the technical system is given by production technologies, tools, machinery and processes. The needs of the two systems, being different and sometimes opposed, are likely to come into disagreement: therefore, the design must take it into account and give life to a joint optimization, drawing the most out of the knowledge and awareness of the two systems.

Potential conflicts of tasks between man and machine occur, above all, at operational levels, where technology is easily programmable to perform routine tasks. Recently other overlaps of functions are also being generated at the level of so-called knowledge workers, with the advent of intelligent systems, through algorithms that learn from their own, neural networks that mimic the functioning of the brain, systems able to take the best decisions given an innumerable series of inputs. The human factor still remains fundamental, although it will be less and less predominant, even as a creator and manager of automated systems.

²⁵⁴ See note 244.

4.2. E-invoice management and governance models available for adoption

The evolution towards electronic invoicing, to produce results of effectiveness and efficiency throughout the professional firm dimension, cannot be limited to the simple transformation of a paper document into an IT document, but must include actions of wider scope and that step in the acquisition and exchange phases of the invoice with its customers. It is essential to have an upstream check on the correct formation of the IT document by the client and the governance of the entire document cycle in all its successive phases, including storage: no transformation process can be successful if it does not provide for the definition of procedures and the planned management control of all phases. The main phases of a documentary process of a professional firm are made up of a first phase of document acquisition, which can be produced internally on behalf of the client or come from the latter through computerized interface tools, a further inspection phase and importation in the internal management software, preparatory to the subsequent accounting phase. The processing usually follows a certain procedural process that, through the use of the same software tool, reads and identifies the invoice metadata to propose a first accounting record, which must only be controlled, or integrated, by the human resources of the professional firm. Once the work is finished, the document is filed to be kept according to law.

The digitization of the invoice produces reflections on the phases of acquisition, management and accounting, for which different organizational models exist and can be implemented. The choice of the organizational model, intended as a way to manage resources and systems in order to make the services to be provided to the customers of the professional firm more efficient, must be carried out after analyzing and comparing the different organizational models that can be adopted. For small-scale professional firms, where the main activity is accounting, with a minimum hardware component and the absence of know-how in the field of digital document conservation, professional will focus on outsourcing to the client the processes of issuing, transmitting and preserving the invoice, while supporting customers by providing them with an IT platform necessary for issuing and

receiving electronic invoices. Otherwise, in the more structured professional offices, with a hardware infrastructure able to guarantee a good level in terms of data security and the presence of a person skilled in the field of digital preservation, the most appropriate organizational model is that of in-house, excluding the transmission of invoices, which will be carried out by the customer through the use of a web service channel made available by the professional firm.

The choice of the organizational model will depend on several factors, and in particular: (a) with regard to sales invoices, (1) from the data acquisition method, (2) from the issuer and digital signature of the e-files, (3) from the transmitting subject and channel of transmission, (4) from the invoice verification activities by the professional firm; (b) with regard to purchase invoices, (1) from the recipient subject and the receiving channel, (2) from the monitoring activity of electronic invoices.

4.2.2. Sale invoices

The acquisition method connected with information that will compose electronic invoices to be forwarded to the Interchange System produces impacts on the overall organizational model, since providing customers with a production and training service for invoices drawing up, requires time and resources, and can be carried out with regard to those customers with a low level of computer knowledge. The solutions for the acquisition of invoices by the professional firm can be traced back to the use of web service solutions, where the customer manually enters the data that make up the invoice directly on a web page, with the possibility to recall the personal details of the transferee or the latest invoices issued by overwriting only the changed data; or uploading the XML file, where the customer draws up the electronic invoice using its own software, and then accessing the professional firm's platform for sending the e-file to the Interchange System.

The issuer, i.e. the person who digitally sign in order to guarantee the e-file authenticity and integrity, as required by Article 21 of Presidential Decree n. 633/1972, and who sends the file, can be identified in at least three parties, with as

many different impacts on the organizational model adopted: (a) the case in which issue is made by the transferor is when the aggregation of data included in the invoice and the digital signature are activities performed directly by the client of the professional firm. In these cases, the firm makes its platform available to customers, who, by accessing remotely, create and send the electronic invoice; (b) the case in which issue is the responsibility of the professional office, if the aggregation of the data included in the invoice and the digital signature are activities carried out directly by the latter. It is important to underline the need of the professional firm to produce and store findings useful to demonstrate incontestably the origin of data used to generate the electronic invoice on behalf of customers, which in case of use of a cloud computing platform, will be proven by the log files stored by the software platform; (c) the case in which issue is made by the software house, if the aggregation of the data included in the invoice and the digital signature are activities performed by an external company providing the software platform or by a third party provider. Here again, customers of the professional firm will be able to log in with their credentials and forward the data that will compose the electronic invoice, after which the software house will have the responsibility to digitally sign the file and send it to the Interchange System.

The impacts on the organizational model of the professional office will also be different in relation to the subject responsible for transmitting files to the Interchange System. The simplest case, and less impactful on the operation of the professional office, occurs when the transmission and sending is performed by its customer. The latter, however, could rely on its accountant or a third software house: (a) transmission performed by the accounting office: in this case, XML file forwarding is carried out by the latter through the client's certified electronic mail, or by activating a web service or FTP transmission channel by specifying the recipient code; (b) transmission performed by the software house: electronic invoice submission to the Interchange System is carried out by the latter via the web service or FTP channels. In this circumstance, the professional firm will not have to carry out any activity, since the whole process is carried out autonomously by the software house, with importation into the platform of the delivery receipts

attesting that invoices have been correctly issued or rejection notices reporting the errors that emerged after the checking activities performed by the Interchange System.

4.2.3. Purchase invoices

As regards purchase invoices, the effects on the organizational model adopted vary particularly in relation to the fact that the recipient is identified either in the professional firm or in the software house. Final customer can be autonomous in receiving e-files, but must then transmit them to the professional firm in order to both be accounted for and VAT settlement. In the case of reception made by the professional office, it can be done through its certified or specific mailbox of individual customers. In the latter case, the professional firm must be equipped with multi-EM (electronic mail) management software or use its own mailbox to receive the electronic invoices. The best solution is to activate a web service or FTP channel to receive all the XML files of each specific customer, also because it allows to have in-house purchase invoices to be recorded successively.

Electronic invoices recording, as anticipated above, will be facilitated by the automatisms granted by the software system, which will allow to recognize information included in the document and make the accounting registration, whose control or possible integration will be the task of the employees of the professional firm.

4.3. Survey on the impacts of e-invoicing on labour productivity

The term "Information and Communication Technologies" (ICT) has been introduced in the current language to indicate that complex of sciences, methodologies, criteria, techniques and tools, designed to enhance the activities of collecting, transmitting and processing information.

In the most common sense, the term refers to a set of technologies that allow, in various ways, the treatment of information. Examples are the hardware and

software of personal computers, but also mobile phones, satellite systems, fixed and mobile telephony infrastructures and, of course, the internet. Precisely because they are applicable to various contexts, ICTs play a major role in the processes of economic growth and productivity²⁵⁵. It is now universally accepted that technologies are essential tools to increase labour productivity, improve living conditions, provide learning opportunities, improve health care and the provision of personal services, and eliminate barriers between markets. The effects of their adoption and dissemination have long been the subject of study and debate. The expression General Purpose Technologies was used for the first time by Bresnahan and Trajtenberg in a 1992 article²⁵⁶, later published in the *Journal of Econometrics* in 1995²⁵⁷.

According to the authors, the GPT, and among them the ICT, are characterized by being: (a) pervasive, capable, that is, of a very extensive diffusion, both in different production contexts and in the territory; (b) subject to incremental innovations which, over time, improve their quality resulting in a reduction in the prices associated with them; (c) capable of fostering innovative processes by making the production of new goods and services simpler and cheaper. In their important work, Bresnahan and Trajtenberg investigated extensively the relationship between the adoption and diffusion of general-purpose technologies and economic growth, as well as productivity in the working context. It was highlighted how the arrival on the market of new and more efficient general-purpose technologies, triggers a cycle that is divided into two successive phases. During the first, at the initial stages of the adoption of GPT by organizations, output and productivity are reduced, real wages are stagnating, while total profits on the gross domestic product declines. The benefits of adoption and dissemination arise during the second phase, once the processes of learning and knowledge generation necessary for the effective exploitation of the new technology have taken place and all the goods and services

²⁵⁵ Cadorna M. et al., "*ICT and productivity: conclusions from the empirical literature*", *Information and Economic Policy*, Volume 25, Issue 3, 2013, pp. 109 - 125.

²⁵⁶ Bresnahan T.F., Trajtenberg M., "*General purpose technologies. Engines for work?*", NBER Working Paper No. 4148, 1992. Available at: <https://www.nber.org/papers/w4148.pdf>.

²⁵⁷ *Journal of Econometrics*, volume 65, issue 1, 1995, pp. 83-108. Available at: <https://www.sciencedirect.com/science/article/pii/030440769401598T>.

complementary to it have been developed. During this phase, the process of economic and productivity growth takes place with an increase in output.

The systems of accounting re-engineering through the use of electronic invoicing are included in the above-mentioned context of evolution and development of work tasks, job enrichment, automation and facilitation of accounting processes to have then effect on the overall operational and economic working efficiency of the organizational reality of the professional firm or data centre company.

The purpose of this paragraph is, firstly, to assess the impact and contribution that electronic invoicing systems will have on labour productivity, specifically in professional firms. Furthermore, it will highlight the impact that it, through ICT systems, will have on the specific unitary costs of each invoice.

4.3.1. Specification of the sample and method of investigation

In order to better understand the way in which professional firms approached the introduction of the electronic invoicing obligation within their organization, the study and analysis carried out on 55 national cases that will be presented below, embrace a pool of experiences with sufficiently wide and varied characteristics to provide a picture as complete as possible of the main types of professional firms operating in Italy and of analysis on the possible divergence of impact of the electronic invoice. Each of the cases analyzed was traced back to a common comparison scheme, through the creation of synthetic sheets that describe the characterizing information and through the identification of some dimensions through which these cases were then evaluated. In describing this analysis, however, it is essential to make a fundamental premise: the cases included in the sample represent projects of dematerialization and early start of the electronic invoice in the B2B and B2C sector in 2018 and that can be defined as the current state of the art in the sector as they are recognized as reference models.

For the definition of the sample, it was made the fundamental premise that to give an overall picture of the effects that the dematerialization of the invoices can entail, it was necessary to start from a selection that is as complete as the different types

of Italian professional offices. Therefore, the choice was made to balance the number of Italian professional firms according to the type of services offered and activities carried out, according to their size and according to their geographical position.

The research activity was carried out through an extensive survey within professional offices belonging to the Certified Public Accountants Territorial Orders of Cremona, Mantua, Milan, Monza and Brianza, Lecco, Brescia, Turin, Alessandria, Novara, Trento, Padua, Treviso, Belluno, Vicenza, Verona, Udine, Pordenone, Bologna, Ferrara, Modena, Parma, Reggio Emilia, Florence, Livorno, Lucca, Pisa, Pistoia, Macerata and Camerino, Pescara, Teramo and Bari obtaining a total of about 19,250 cases of final customers of implementation and use of the electronic invoicing. In any case, the selection was made taking into consideration tax offices that carry out some activities that, by their nature, involve the management of significant volumes of paper documents and that are therefore potentially more sensitive to the role of electronic invoicing as a possible tool for improvement and efficiency.

Following the information obtained from the survey, a more representative and significant case study was selected for the study of the effects on the productivity of professional firms making up 85% of the sample.

The methodology adopted, consistently with the dual nature of the objective pursued in the generalized obligation of electronic invoices from the year 2019 anticipation and improvement of internal productivity, includes both the transmission of a survey with direct interviews to the professional firms and the deepening of results gained through the collection of information regarding: (a) the size and activity performed by the final customers of the accounting service; (b) the accounting system; (c) the type of organizational model adopted for the XML file management (as described in the previous paragraph); (d) the times recorded by each employee for the management of the annual accounts of each final customer; (e) the volume of sales and purchase invoices managed for each final customer in the period of one year. Regarding the size of the professional offices that participated in the survey, Figure x.1 represents the breakdown into classes of

turnover and number of employees and professionals employed: it can be seen that these are small firms which make up 20% of the sample, with a turnover of less than EUR 200,000; average size firms which account for the 55% of the sample, with a turnover of EUR between 650,000 and 200,000; and 25% of the sample made up of professional firms with a turnover of more than EUR 650,000. Moreover, taking into account also the number of employees and professionals, average size firms prevail, since about 45% consists of an average of 9-10 units.

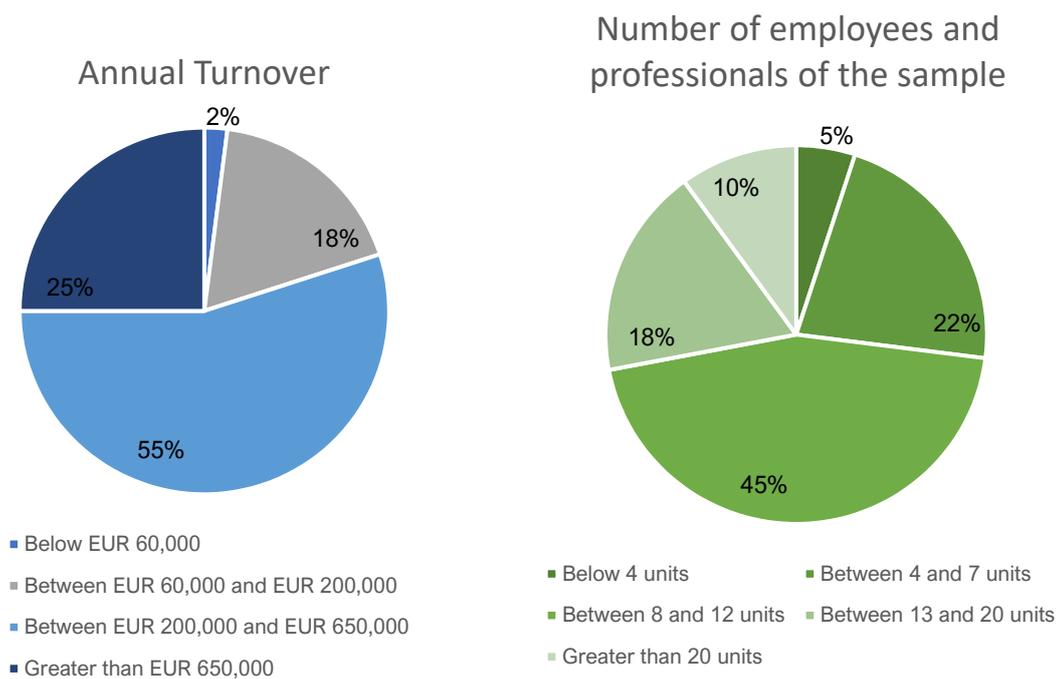


Fig.5. Graphs showing features of the selected sample. Data refers to the period from January 2017 to December 2017.

Another important dimension in defining the characteristics of the professional offices, that participated in the survey, is the scope of their activities. Figure x.2 represents the activities carried out by the them. Two main evidences emerge: they are characterized by a high heterogeneity of activities (17 of the 21 activities envisaged are practiced by at least one fifth of the studies) and accounting management is confirmed as the macro-activity carried out by the majority of professionals who they participated in the survey. This last point is particularly relevant in the context of this evaluation, since the dematerialization and electronic invoicing solutions can almost exclusively impact on the phases of acquisition of

documentation and recording, the core activities of accounting and bookkeeping.

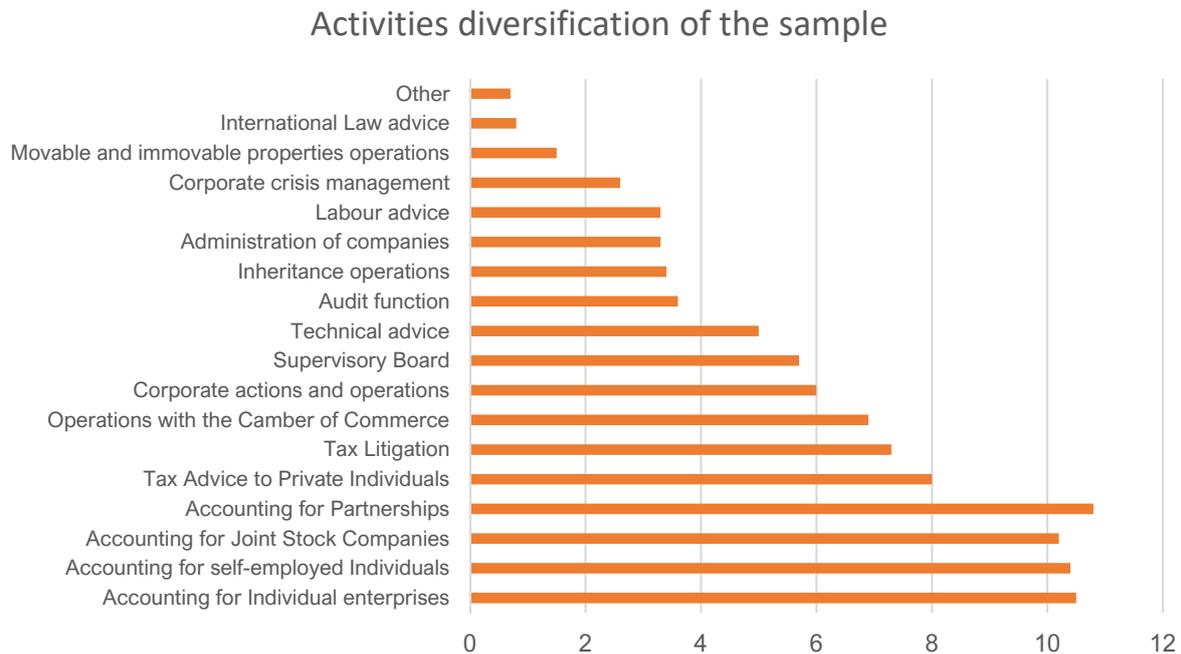


Fig.6. Graphs showing activities performed by professional firms included in the selected sample. Data refers to the period from January 2017 to December 2017.

4.3.2. Evaluation results: costs and efficiency

Accounting flow mapping process and the recording of the quantitative indicators for the recording of sales and purchase invoices during the years 2017 and 2018 made it possible to evaluate and highlight the evolution of the performance of the sample of professional firms upon which the survey has been developed. Several necessary information has been collected to monitor the performances of the different activities that make up the accounting process: (a) cycle time²⁵⁸: a time collection activity was carried out directly at the workstations through which it was possible to calculate the average time related to sorting and reordering of invoices, to accounting recording and storage. The cycle time is the parameter that indicates the time needed to complete a process step. Within services, the cycle time can vary considerably depending on the operator, the accounting regime and the

²⁵⁸ It allows to determine the average time necessary for workpiece processing. It is determined by analyzing in detail each individual operation of the work cycle. Each of the activities that make up the operation is called phase and for each of these it is possible to calculate, or detect, or estimate the time necessary to execute it. On the point see Galgano A., *“Le tre rivoluzioni. Caccia agli sprechi: raddoppiare la produttività con la Lean Production”*, Milano, 2002, pp. 118 – 120.

complexity of the final customer. (b) Impact of reordering time of documents: the average time required for arranging and reordering the invoices by date, code and customer delivered was found. It has been found that the variable "final customer" strongly influences the average recording time as it mainly derives from the flow interruptions caused by the lack of documents or their illegibility. (c) Incidence of telephone interruption time: It was tried to measure how many minutes in each hour are dedicated to receiving and making calls due to lack or incomprehensibility of the document. (d) Value-added time: it was quantified by excluding non-value assets not immediately eliminable, or necessary to resolve anomalies. The incidence of time to value added was then estimated on the total lead time²⁵⁹ needed to register an invoice. (e) FTY (first time through): the volume of the number of invoices delivered by the customer which necessitated verbal clarifications due to misunderstanding or because there was no clear legibility of the amounts or items. The measurement carried out during the year 2017, before the entry into force of the electronic invoicing obligation, led to the following average results:

Processing stages	Cycle time [minutes]	
	<i>Ordinary tax system</i>	<i>Simplified tax system</i>
Reordering	2.11	3.12
Recording	1.08	1.20
Storage	0.86	0.75
Lead Time	4.05 [minutes]	5.07 [minutes]

	<i>Ordinary tax system</i>	<i>Simplified tax system</i>
Invoice per hour	14.81	11.84
FTY	0.906	0.955
Reordering impact [%]	31	46
Telephoning impact [%]	10	7
Efficiency cycle [%]	33.95	12.72

Table 3. Quantitative efficiency metrics referring to year 2017 prior to the introduction of electronic invoicing.

²⁵⁹ Time between the order and the moment of satisfying the customer's request. Within professional firms and in the field of VAT, this is represented by the time necessary to retrieve the documentation, register the invoices and VAT settlement.

The statistical analysis carried out in the chosen sample of the professional studies has led to the following considerations of the average operating result of accounting registration: (1) 12 invoices per hour recorded for customers under simplified tax system; (2) 15 invoices per hour recorded for customers under ordinary corporate tax system.

Following the same survey carried out during the year 2018, the results obtained after the introduction of the electronic invoice in the sample of customers examined, led to the following considerations, summarized in the table below.

Processing stages	Cycle time [minutes] <i>Ordinary tax system</i>		Cycle time [minutes] <i>Simplified tax system</i>	
		Δ '18 - '17		Δ '18 - '17
Reordering	0.42	- 80%	0.45	- 86%
Recording	0.75	- 30%	0.61	- 49%
Storage	0.55	- 36%	0.52	- 31%
Lead Time	1.72 [minutes]	- 57%	1.58 [minutes]	- 69%
Invoice per hour	34.9	+ 135%	37.9	+ 220%
FTY	0.935	+ 3%	0.97	+ 2%
Reordering impact [%]	7.3	- 76%	5.9	- 87%
Telephoning impact [%]	16.2	+ 62%	9.4	+ 34%
Efficiency cycle [%]	65.8	+ 94%	40.6	+ 219%

Table 4. Quantitative efficiency metrics referring to year 2018 following the introduction of electronic invoicing.

A significant decrease in accounting lead time can be noted, mainly due to the reduction in the time attendance of document reorganization and archiving, now fully digitalized. The recording time has decreased by about a third compared to that of the year 2017. The results show a clear increase in performances: the number of registrations for each hour worked has increased by about to 160% on average. This was made possible by the introduction and adoption of the new information system that allows employees to immediately and automatically retrieve sales and purchase invoices sent and transited through the Interchange System, import them by clicking on the Import button and accounting them faster,

simplifying and speeding up the archiving process, at the same time drastically reducing the number of anomalous invoices, as highlighted by the FTY index.

In addition to the above, it is worth highlighting the impact on unitary costs of each invoice that emerged during this survey, resulting from the increased efficiency granted by a fully electronic management of invoices and an increasingly digital accounting.

It should be pointed out that the total average cost of invoice involves the quantification of the direct and indirect costs specific to the accounting area of the professional firms analyzed and compared with the average number of documents recorded during the tax year. From the graphs below, it is clear that the efficiency produced by electronic invoicing leads to a reduction in unit costs while maintaining a downward trend in both scenarios, this due to the economies of scale that are created in any production process, as an increase in the amount of input processed is followed by a reduction in the time required and costs that are more than proportional. Unit costs range from an average of EUR 2.5 per invoice to EUR 1.5.

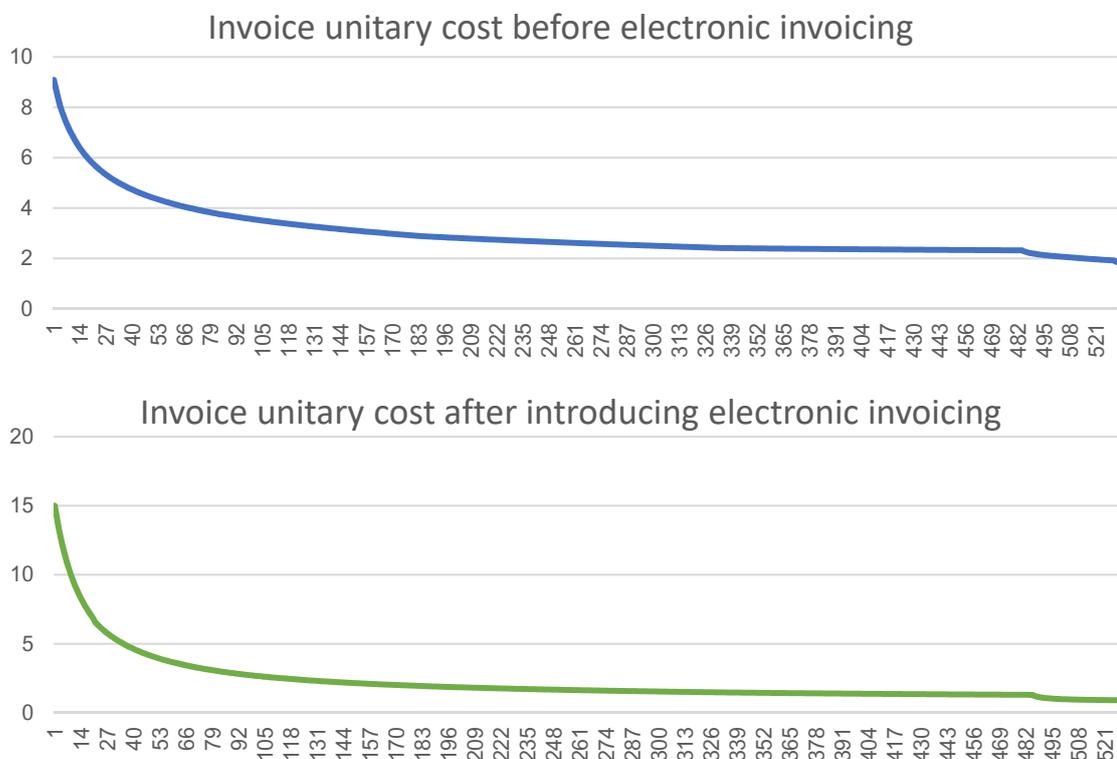


Fig.7. Graphs showing invoice processing unitary cost average related to professional firms included in the selected sample.

Conclusion and final thoughts

The importance of the services sector in the panorama of advanced countries has now reached that of industry. Moreover, the continuous evolution and the dynamism of the market imposes a continuous improvement of the performances in order to be competitive. It becomes therefore essential that professional firms accept e-invoicing as a new philosophy of managing the accounting process and that, in this evolution, see an opportunity for internal performances improvement and relations with external stakeholders strengthening.

The evolutionary model illustrated in this chapter represents a possible modelling that allows to establish a logical and numerical relationship between the operational and economic performances of the professional office with the imposition of a new obligation by the central government.

The function of this model was therefore to understand the possible impacts, declined in the operational, organizational and economic sphere, useful for guiding the professional firm in its internal management choices. The results, measured during the year 2018, were able to demonstrate and prove how the road taken by these professional firms to the concrete improvement of internal economic parameters. The validity of the adopted methods is given by the numbers that have shown the situation *ex ante* and *ex post* and that can be obtained only with observations on the field and constant checks of the performance indexes. In conclusion, it's worthy to underline how the solutions introduced should not be considered definitive but rather a step of the path towards improvement that will necessarily have to continue over time, as much desired by the PDCA (plan - do - check - act) organizational mode²⁶⁰.

²⁶⁰ The PDCA model or Deming wheel is the visual representation of a "virtuous" cycle of continuous improvement for products, processes and specific problems. It starts from the planning phase, goes on with a practical test, move on with performances monitoring. If the latter do not go right and as wanted, people must take corrective and remedial actions to improve them.

Conclusion

The analysis conducted was oriented in a double direction. From one perspective, it was tried to outline the theoretical and legal profiles that regulate the electronic invoicing system in Europe and, above all, in Italy, with regard to up-to-date news. On the other hand, the technical and strategic reasons that prompted the Italian Government to anticipate the electronic invoicing obligation in 2019 have been investigated.

The present work started from a basic finding: the current regulation of VAT is strongly subject to the risk of fraudulent phenomena eroding financial resources both of Member States and of Italian Central Government, at the same time, producing distortions in competition that adversely affect economic operators and the system in general. The analysis has extended to the evaluation of the elements qualifying the tax reaching a conclusion that VAT neutrality is the fundamental principle which cannot be missed in the tax application mechanism. Likewise, it has also been noted that the VAT settlement and collection scheme is, to date, a necessary element to be maintained for reasons of a careful and proper VAT system operation. Taking also into consideration the guidelines of the European Commission on the topic, it has been highlighted that any amendment and revision activity of the current VAT rules must meet the following requirements: (a) significantly reduce fraudulent behaviour, (b) do not produce disproportionate burdens for economic operators and tax administrations, and (c) ensure compliance with tax neutrality principle.

The analysis of the fraudulent phenomena that formed the object of the third chapter of this work, has made it possible to confine the main fraudulent phenomena affecting the tax scheme functioning to the following: (a) regular non-payment of invoiced VAT; (b) fictitious intra-community operations declaring, in which exempt goods are sold in the domestic market producing an income fraud due on final consumption, to the detriment of the State of the seller; (c) carousel fraud, following the entry of a missing trader within the production-distribution chain of the good or service sold, which pockets from its customers the tax charged

on the respective supplies and vanishes without paying it to the Treasury.

Furthermore, it should be stressed that in the great majority of cases such phenomena are structured and controlled by criminal organizations, against which the current sanctions provided by the Legislator are ineffective in their deterrence function. It is therefore preferable to adopt instruments aimed at eliminating the advantage underlying VAT fraud upstream.

In this context, electronic invoicing, in its general form, presents both advantages and criticality profiles, the first ones deriving mainly from the immediate availability of tax information contained in the invoices issued and received by economic operators to the financial administration. The limits and technical and operational criticalities of the current rules on the invoice date for the exercise of the right to deduct VAT and on the process of invoice tax-related variations have also been highlighted.

The finding that the phenomenon of VAT fraud is being expanded as well as the limits of the current regulations make it necessary to take action that modifies the system and makes it stronger than yesterday against the frauds. The key to innovating the VAT system is the technology itself. The opportunities offered by the virtual world have not yet been studied and exploited completely, such as the possibility of adopting a common online registration system and sending invoices to the entire European Continent.

What we need to realize as soon as possible is that today's economy does not require to improve a system that was designed in, and for, another era: all that is needed is to reconsider the VAT system from its foundations on the basis of available technologies and changes that have occurred over the last few years.

Reading the conclusions to the third chapter, in fact, I wanted to mention the project of the European reconsideration of the new VAT definitive system. In the latest regulatory measures of the Directives and of the Council Directive Proposals, the intentions of the European Legislator are becoming clearer, as the awareness of what will actually be the definitive VAT system grows, to progressively extend the implementation mechanism (M) OSS, currently applicable only to e-commerce services, to all intra-union operations, including therefore exchanges within B2B

relations.

The definitive VAT system moves, in fact, from the need to overcome the difficulties created by the exemption regime having as main objective the taxation of intra-EU trade according to destination country taxation rule, through an application mechanism impervious to transnational fraud. The fact that the MOSS scheme introduces for business-to-business intra-Community transactions VAT recovery obligation against the seller/lender, means that the problem of transnational fraud can be, if not completely eradicated, at least significantly reduced compared to the situation created with the transitional regime and the reverse charge mechanism. It is, therefore, not excluded that even in the new regime of the (M)OSS, intra-Community operations may be subject to fraud and evasion which once again exploit the intra-Community nature of the supply of goods and services. In fact, the scheme at hand requires the national lender to recover the amount of VAT expected in the country of arrival of goods and services, and therefore according to the rates determined by the legislation of the State of destination. In this sense, the differences between the national rates of the Member Countries, even though partly harmonized by the European Regulations in their minimum values, could in any case represent a weak profile and encourage further types of transnational frauds. In this context, the widespread use of electronic invoicing within Europe, is part of a system of initiatives and instruments designed to make the behaviour of operators more transparent in the context of VAT payment and recovery.

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