DOING BUSINESS IN ITALY

Alessandro Portale

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### 1. Introduction

**NATIONAL LEGISLATION**

The Italian legislation follows the Directive 2006/112/CE (recast of the Sixth Directive)

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>-</td>
<td>DPR 26th October 1972 no. 633</td>
</tr>
<tr>
<td>-</td>
<td>D.L. no. 331/1993 (Intra-Community exchanges)</td>
</tr>
<tr>
<td>-</td>
<td>D.L. no 41/1995 (Margin scheme)</td>
</tr>
</tbody>
</table>

**OFFICES IN CHARGE OF VAT MANAGEMENT**

VAT is managed by the "AGENZIA DELLE ENTRATE"

They administer all taxes (except customs duties)

Local offices are submitted to:

a) Direzioni Regionali delle Entrate (chief town of the region) – Competent for Ruling

b) Agenzia Centrale delle Entrate (Rome) – Competent for Ruling for Non-Resident Operators
1. The operators relate with the offices by filing different forms:
   a) Form to start, change and cessation of the activity (AA7);
   b) Comunicazione dati (Data communication return);
   c) Dichiarazione IVA annuale (Annual VAT return);
   d) Listings and/or Intrastat.

   All these forms are filed electronically.

   ANR/3 (Direct Identification) is instead, sent by courier or filed personally.

2. When is a VAT registration required – Regulation for tax representation
Obligation to register for VAT purposes in Italy (direct identification or fiscal representation)

- The non resident operator (EU or NON EU) performs in Italy taxable supplies of goods or services:
  - to customers non taxable persons ("privates") including the supplies with installations
  - To foreigner taxable persons non established in Italy

- The non resident operator (EU or NON EU):
  - removes goods from a VAT warehouse in Italy
  - performs particular "triangular" or "chain" transactions

- The non resident operator (EU) performs in Italy the following taxable transactions:
  - "distance sales" to private customers exceeding the yearly threshold of Euro 35.000 euro
  - introduction of goods in Italy from another Member State for the purposes of his business,

NON RESIDENT
Art. 17 DPR 633/1972

TAX REPRESENTATIVE

- Can be an individual person or a legal entity
- Appointed by public deed, with private registered deed, or a letter recorded at VAT office where the representative is resident
- The appointment must be communicated to the other party
- Before the transaction has been performed
- Before the first transaction
- The representative must accomplish the obligations and exercise the rights linked to both active and passive transactions
- Invoicing, registration, deductions of VAT, refunds, VAT returns
- He is jointly responsible with the represented person for all VAT obligations
NON RESIDENT
Art. 35 ter DPR 633/1972

DIRECT IDENTIFICATION

CAN BE ONLY AN EU OPERATOR. ITALY HAS NO "MUTUAL ASSISTANCE" CLAUSE WITH OTHER COUNTRIES

ITALY HAS NO "MUTUAL ASSISTANCE" CLAUSE WITH OTHER COUNTRIES

IT MUST BE DONE ON A DATE PRIOR TO THE FIRST TRANSACTION

IDENTIFICATION IS ALTERNATIVE TO THE APPOINTMENT OF A TAX REPRESENTATIVE

IDENTIFICATION IS MADE WITH ANR/3 FORM

FILED AT THE CENTRO OPERATIVO PESCARA

IF THE TAX REPRESENTATIVE WAS APPOINTED BEFORE IDENTIFICATION, HIS VAT NUMBER MUST BE CLOSED BEFORE OPENING THE NEW POSITION

NON-RESIDENTS MUST FULFIL THE PRESCRIBED OBLIGATIONS DIRECTLY, AND EXERCISE THE RIGHTS LINKED TO BOTH ACTIVE AND PASSIVE TRANSACTIONS

• INVOICING
• REGISTRATION
• DEDUCTIONS OF VAT
• REFUNDS
• DECLARATIONS

3. Place of supply – Goods and services - peculiarities
GOODS: SUPPLY WITH INSTALLATION

ACQUISITION OF GOODS WITH INSTALLATION

IF THE PURCHASED GOODS ARE INSTALLED OR ASSEMBLED IN ITALY BY THE EU SUPPLIER OR ON ITS BEHALF

IT IS NOT A NORMAL INTRACOMMUNITY ACQUISITION

THIS TRANSACTION IS CONSIDERED VAT TAXABLE IN ITALY

IF THE CUSTOMER IS A TAXABLE PERSON

THE ITALIAN CUSTOMER HAS TO APPLY THE REVERSE

IF THE CUSTOMER IS A PRIVATE PERSON

THE EU SUPPLIER IS OBLIGED TO REGISTER FOR VAT PURPOSES IN ITALY IN ORDER TO APPLY ITALIAN VAT

GOODS: SUPPLY WITH INSTALLATION

ART. 41 COMMA 1 Lettera c)

SUPPLIES OF GOODS WITH INSTALLATION

IF THE SOLD GOODS ARE INSTALLED OR ASSEMBLED IN ANOTHER EU STATE BY AN ITALIAN SUPPLIER OR ON ITS BEHALF

 THESE SUPPLIES ARE NOT VAT TAXABLE

IF THE CUSTOMER IS A TAXABLE PERSON

THE ITALIAN SUPPLIER ISSUES AN INVOICE WITHOUT APPLICATION OF VAT

NORMAL LISTING OBLIGATION

IF THE CUSTOMER IS A PRIVATE PERSON

THE ITALIAN SUPPLIER

ISSUE A NON TAXABLE INVOICE

NEL LISTING FISCALE E STATISTICO NON COMPILA LA COLONNA 3 (CODICE IVA ACQUIRENTE)

HAS TO BE REGISTERED FOR VAT PURPOSES IN THE OTHER STATE IN ORDER TO APPLY LOCAL VAT
SERVICES – USE AND ENJOYMENT
(Starting from 20.02.2010)

The use and enjoyment has been implemented only in the following cases:

- Telecommunication and broadcasting services (B2C)

- Short term hiring of means of transport (B2B and B2C)
  - if the mean of transport is put at the disposal of teh customer in Italy and it is used in the EU
  - or the mean of transport is put at the disposal in a NON EU country and it is used in Italy

- The “non short term” hiring of means of transport (B2C)
  - if the supplier is established in Italy and the mean of transport is used in the EU
  - or if the supplier is established outside the EU and the mean of transport is used in Italy

4. Reverse charge
Reverse Charge in Italy

General reverse charge rule for:

✓ Supplies of goods
✓ Supplies of services

• Performed by suppliers who are not resident in Italy;
• When the customer is a taxable person established in Italy;
• Even if the supplier has appointed a tax representative or is directly identified for VAT purposes in Italy.

Reverse Charge in Italy

When a taxable supply of goods or services is carried out in the Italian territory by a non-resident supplier for the benefit of Italian established taxable persons, the customer is liable for VAT.

...
Reverse Charge in Italy

But if the taxable supply of goods or services is carried out in Italian territory by a non-resident supplier to a non-resident customer, the supplier is liable for VAT.

Reverse Charge in Italy

The reverse charge rule is not applied if the supplies of goods or services are carried out by non-resident suppliers through a fixed establishment on Italian territory.
Reverse Charge in Italy

- In the presence of a fixed establishment:
  - If the PE carries out the supply directly:
    - Reverse charge is not applied
  - If the supply is carried out by the headquarters or by a PE in another member state:
    - Reverse charge has to be applied

- If the taxable transaction is performed between two non-established taxable persons, VAT is due by the supplier. Obligation to register for VAT purposes in Italy.

- The reverse charge has to be applied even if the supplier has a tax representative or direct identification in Italy.

5. VAT rates
THE VAT RATES APPLICABLE TO THE SUPPLY OF THE GOODS APPLY ALSO TO MANUFACTURING CONTRACTS AND TO THE LEASING, RENTING AND SIMILAR CONTRACTS OF THE GOODS

THE STANDARD VAT RATE 20% APPLIES TO REPAIR SERVICES

6. Taxable amount
art. 13 and 14 of dpr no. 633/1972
**Taxable amount**

- the total amount of the consideration to be paid to the supplier of goods or services according to the contractual provisions, including:
  - the costs and the expenses relating to the performance of the contract;
  - debts or other costs towards any third party and charged to the purchaser of goods or services;
  - the subsidies directly linked to the consideration to be paid by third parties.

Specific provisions for certain transactions: exchange transactions, transfer of goods from the principal to the agent, self supplies, free supplies, transactions among group companies etc.

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**Taxable amount**

**Free supplies and self supplies**

- Free supplies of goods
- Self supply
- Attribution of goods to associates

- Free taxable services
- Assignment of services to associate
- Services B2B carried out continuously over a period of more than one year

- purchase price; or
- cost price of the goods
- or of similar goods

Cost to provide the service
7. Cash discounts
Cash discounts

VAT on the discount is recoverable by the supplier if:
- the cash discount can be specifically linked to the original supply from Supplier to Dealer;
- the credit note issued to the Dealer shall report: the name of the Final Consumer, the quality and quantity of the goods supplied, the taxable amount and the tax rate, the reference to the original invoice issued to the Dealer.

Timing issue: 1 year?

Min. Res. No. 147/E of 2008 refers to the Case C-317/94 (Elida Gibbs).

8. Fixed establishment
## Fixed establishment

No definition of fixed establishment in the Italian VAT law
Only a definition of permanent establishment for CIT purposes

<table>
<thead>
<tr>
<th>Supreme Court:</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ no reference can be made in a valid manner to the definition of PE contained in Double Tax Treaties and in the OECD Model Convention Commentary for the purposes of identifying a fixed establishment for VAT purposes. The Court instead maintained that reference should be made to the ECJ cases (see, Cass. Sez. Trib. 6th April 2004, n. 6799 and Cass. Sez. Trib. 6th December 2002, n. 17373).</td>
</tr>
<tr>
<td>➢ the definition of PE shall be taken from article 5 of the OECD Model Convention, integrated by the provisions of the VI directive and relating ECJ case law. The Commentary to the OECD Model Convention shall be regarded as a mere and not binding guidance in the interpretation of treaties (Cass. Sez. Trib. 25th January 2006, n. 17206).</td>
</tr>
</tbody>
</table>

According to the Italian Supreme Court, a separate legal entity with material and human resources can be regarded as the FE of a non-resident entity when it has been entrusted with the management of the business of the non-resident entity and does not just carry out auxiliary activities.

Elements that can suggest the presence of a FE are, for example: the same individuals managing the foreign entity also manage the Italian one; the Italian employees participate in the signing of agreements, even without powers of representation.
9. Right to VAT deduction and VAT refunds

VAT Deduction

Art. 19, 19-bis, 19-bis1, 19-bis2, 19-ter
DPR 633/1972
## VAT Deduction

<table>
<thead>
<tr>
<th>Goods with VAT Objectively Non-Deductible (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. AIRCRAFT (AND VEHICLES FOR DOUBLE USE HIGHER THAN 2000 CC OR 2500 CC IF DIESEL)</td>
</tr>
<tr>
<td>2. LUXURY GOODS, SHIPS</td>
</tr>
<tr>
<td>3. CARS, VEHICLES AND MOTORCYCLES OF ANY PISTON DISPLACEMENT at 40%, unless exclusive business use;</td>
</tr>
<tr>
<td>4. FUEL AND LUBRICANTS, COMPONENTS, SPARE PARTS, MAINTENANCE EXPENSES, REPAIRING, EMPLOYMENT AND CUSTODY</td>
</tr>
<tr>
<td>5. TRANSPORT OF PERSONS;</td>
</tr>
<tr>
<td>6. FOOD AND DRINK – (VAT on catering and restaurant services is recoverable, unless entertainment);</td>
</tr>
<tr>
<td>7. MOBILE PHONES according to the % of business use;</td>
</tr>
<tr>
<td>8. ENTERTAINMENT EXPENSES IF THE UNIT PRICE IS EQUAL OR HIGHER THAN 25.82 Euro;</td>
</tr>
<tr>
<td>9. RESIDENTIAL PROPERTIES</td>
</tr>
</tbody>
</table>

*Deduction is allowed if the goods are the object of the ordinary activity of the enterprise;*

### VAT Refunds
ANNUAL CREDIT AND REFUND
Art. 30 DPR 633/1972

| General rule | Deduction in the periodic VAT settlement of the following year. Settlement with other taxes and contributions in the F24 form (not for foreigner). |
| Special rule | Refund claim |

TERMS FOR FILING THE CLAIM
From 1st February until the deadline for the filing of the annual VAT return (30th September of the following year)

TERMS OF EXECUTION OF THE REFUND
Tax collector: Within 60 days from the claim
Office: Within 90 days from the claim

VAT REFUND
Art. 30 DPR 633/1972

<table>
<thead>
<tr>
<th>REQUIREMENTS FOR THE REFUND</th>
<th>COMMON REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount higher than €2,582.28</td>
</tr>
<tr>
<td></td>
<td>Cessation of the activity (in any case even though the amount is lower than €2,582.28)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SPECIFIC REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Average rate of the purchases higher than the average rate of the sales plus 10% net of depreciable goods</td>
</tr>
<tr>
<td>b) Non taxable transactions (artt.8, 8-bis and 9 DPR no. 633/1972 and artt.40, par. 9, and 58 DL no.331/93) higher than 25% of the transactions performed</td>
</tr>
<tr>
<td>c) Purchases and imports of depreciable goods, for studies and research</td>
</tr>
<tr>
<td>d) Transactions outside of the scope (art.7 DPR no. 633/72) higher than 50% of the all transactions performed</td>
</tr>
<tr>
<td>e) An annual VAT credit maintained for three consequent years</td>
</tr>
<tr>
<td>f) Tax Representative of Non Resident Operators and Foreign Operators directly identified</td>
</tr>
</tbody>
</table>
VAT REFUND
Art. 30 – 38 bis DPR 633/1972

**TYPE**

**ANNUAL REFUND (ART. 30)**
- VR FORM FILED AT THE COMPETENT TAX COLLECTOR
- TERM: FROM 1<sup>st</sup> FEBRUARY TO 30<sup>th</sup> SEPTEMBER OF THE FOLLOWING YEAR

**QUARTERLY REFUND (ART. 38-bis (2))**
- FIRST 3 QUARTERS
- APPLICATION FILED WITH THE OFFICE BY 30<sup>th</sup> APRIL 31<sup>st</sup> JULY 31<sup>st</sup> OCTOBER only by electronic means

**REQUIREMENTS**
1) AVERAGE RATE (letter a)
2) NON TAXABLE TRANSACTIONS (letter b)
3) DEPRECIABLE GOODS
4) SINCE 2007 ALSO NON RESIDENT OPERATORS (DIRECTLY IDENTIFIED OR WITH FISCAL REPRESENTATIVE)

**TERMS AND CONDITIONS**

**TAX COLLECTOR**
- LIMIT OF € 516 456.90
- EXECUTION OF THE REFUND: WITHIN 60 DAYS FROM THE CLAIM
- INTEREST FOR LATE PAYMENT AT 2% PER YEAR as from 1<sup>st</sup> January 2010 (2.75% as from 1<sup>st</sup> January 2003 up to 31<sup>st</sup> December 2009)
VAT Refunds to non-residents

Art. 38-bis2 and 38-ter DPR 633/1972

Directive 2008/9/EC
REFUNDS TO NON-RESIDENTS (EU and non EU)

CONDITIONS

- No fixed establishment in Italy;
- No supply goods and services in Italy, apart from:
  - International transport of goods and ancillary operations (zero-rated according to art. 9 DPR no. 633/72);
  - Supply of goods and services to a person who is liable for payment of VAT through the reverse charge mechanism.

REFUNDS TO EU SUBJECTS
Art. 38-bis2 dpr no. 633/1972

FILING THE APPLICATION AND ATTACHMENTS

It must be filed:
- by electronic means with the Member State in which the taxable person is established;
- with respect to a period of not less than three months and of not more than one year and for an amount of not less than Euros 400. Should the amount relating to one or more quarters be less than Euros 400, the refund shall be claimed with reference to the calendar year, provided that the amount of VAT is not less than Euros 50. The reference period can be less than three months where it represents the remainder of a calendar year;
- in Italian (English and French claims are accepted) and the amount shall be indicated in Euros;
- invoices must be attached;
- in the web site [www.agenziaentrate.it](http://www.agenziaentrate.it) a table of codes to be used for description of goods is available (http://www.agenziaentrate.it/wps/wcm/connect/No/lib/Nsilib/Documentazione/Rimborsi+IVA_VAT+refund/)
- if the reference period is the quarter, it shall be filed as from the first day of the month following the reference period up to 30th September of the calendar year following the reference period;
- if the reference period is the calendar year, it shall be filed as from 1st January of the year following the one concerning the refund up to 30th September of the same year;
REFUNDS TO EU SUBJECTS
Art. 38-bis2 dpr no. 633/1972

DEADLINE

<table>
<thead>
<tr>
<th>Reference period</th>
<th>Starting date for submission</th>
<th>Closing date for submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual (2009)</td>
<td>01/01/2010</td>
<td>30/09/2010</td>
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<tr>
<td>I quarter 2010</td>
<td>01/04/2010</td>
<td>30/09/2011</td>
</tr>
<tr>
<td>II quarter 2010</td>
<td>01/07/2010</td>
<td>30/09/2011</td>
</tr>
<tr>
<td>III quarter 2010</td>
<td>01/10/2010</td>
<td>30/09/2011</td>
</tr>
<tr>
<td>IV quarter 2010</td>
<td>01/01/2011</td>
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</table>

REFUNDS TO NON EU SUBJECTS
Art. 38-ter dpr no. 633/1972

Subjects admitted

Modello IVA 79

condition of reciprocity (Switzerland, Norway and Israel)

handover ordinary mail express courier

Centro Operativo di Pescara - Via Rio Sparto, 21- 65129 Pescara
REFUNDS TO NON EU SUBJECTS
Art. 38-ter dpr no. 633/1972

FILING AND ATTACHMENTS

It shall be filed:
➢ with reference to the calendar year, should the amount relating to the quarter be less than Euros 400 (but more than Euros 50);
➢ in Italian or English.

The following shall be attached:
➢ original invoices;
➢ a certificate issued by the administration of the State of establishment from which it results that the Operator is a taxable person for VAT purposes and the date of registration as such, if any; the certificate is valid for a year;
➢ the documentation proving the payment of the invoices.

DEADLINE

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<td>01/01/2011</td>
<td>30/09/2011</td>
</tr>
</tbody>
</table>
10. Triangulations

IC TRIANGULATIONS

CASE

AN ITALIAN CUSTOMER BUYS GOODS FROM A FRENCH SUPPLIER AND RECEIVES THEM FROM A GERMAN OPERATOR

1) RECEIVES THE INVOICE FROM FR WITHOUT VAT

2) IN THE INVOICE IT IS INDICATED THAT HE IS APPOINTED AS THE PERSON LIABLE TO TAX IN ITALY INSTEAD OF FR

1) INTEGRATES THE INVOICE WITH ITALIAN VAT

2) RECORDS THE INVOICE IN THE SALES AND PURCHASE INVOICES LEDGERS

FR AS A SUPPLIER (COLUMN 2) APART FROM HIS IDENTIFICATION CODE (COLUMN 3) DE AS THE COUNTRY OF ORIGIN (COLUMN 13) ONLY IF IT IS MONTHLY

FILLS IN FORM INTRA 2 - PURCHASES INDICATING
GOODS INVOICE RECEIVES THE INVOICE FROM FR WITHOUT VAT IT PURCHASES FROM FR BUT GOODS ARE DELIVERED BY FR TO DE, IT’S CLIENT IT INTEGRATES THE INVOICE WITHOUT VAT “ART.40, COMMA 2” IT RECORDS THE INVOICE IN THE SUPPLIES AND PURCHASES LEDGERS AS “NON TAXABLE” ART.40, COMMA 2 IT ISSUES THE INVOICE TO DE WITHOUT VAT (ART.41) IT FILLS IN INTRASTAT INTRA 1 PURCHASES INDICATING FR AS PURCHASER COLUMN 5 NATURE OF THE TRANSACTION REPORTS ALPHABETIC CODE (A - I) INSTEAD OF NUMERIC CODE (1 - 9) IT DOES NOT FILL IN STATISTIC PART FOR MONTHLY LISTS (COL. 8-15 PURCHASES) (COL. 7-15 SUPPLIES)

GOODS INVOICE IT SUPPLIES GOODS TO FR BUT DELIVERS THEM TO DE IT ISSUES THE INVOICE TO FR WITHOUT VAT (ART.41) IT FILLS IN INTRA 1 SUPPLIES INDICATING FR AS PURCHASER COLUMN 5 NATURE OF THE TRANSACTION REPORTS ALPHABETIC CODE (A - I) INSTEAD OF NUMERIC CODE (1 - 9) IT DOES NOT FILL IN STATISTIC PART FOR MONTHLY LISTS (COL. 8-15 PURCHASES) (COL. 7-15 SUPPLIES)
11. VAT Obligations – Invoicing – Returns

| VAT SETTLEMENTS | 1- The payments are made on a monthly basis (16th of the following month) with the option of quarterly payment for small enterprises.  
|                 | 2- The balance, if any, is paid within the 16th March of the following year.  
|                 | 3- An annual advance payment shall be paid by 27th December. 
|                 | All payments must be made electronically at an authorized bank by using a specific form (F24).  
|                 | Alternatively: through Authorized intermediaries or TARGET system (not advised) |
| VAT RETURNS     | 1- “Comunicazione Dati” within the end of February of the following year.  
<p>|                 | 2- Annual VAT Return (“Dichiarazione annuale IVA”) from the 1st of February to 30th September of the following year. |</p>
<table>
<thead>
<tr>
<th>VAT MANAGEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>The <strong>formal aspect</strong> is essential (invoicing, registrations, keeping the registers etc).</td>
</tr>
</tbody>
</table>

### INVOICING

1- The **invoice** is the main document that allows the **recovery and deduction of VAT**.
2- **Credit notes** are allowed only in specific cases.
3- If a **Tax Representative** is appointed, the invoice shall show both: a) the name of the Non-Resident Operator; and b) the name of the Tax Representative in Italy.

### BOOK-KEEPING

1- **Sales invoices** must be registered within 15 days.
2- **Purchase invoices** must be registered before the deduction is claimed, and therefore before the relevant "VAT Return" is filed.

<table>
<thead>
<tr>
<th>VAT MANAGEMENT</th>
</tr>
</thead>
</table>
| The following VAT ledgers shall be kept:  
 a) **Sales**  
 b) **Purchases**  
 c) **EU work on movable goods** |
| 2- They must be **numbered and printed** on paper within three months from the deadline of the annual VAT return.  
 This year within the 31st of December 2010 but on request of the Tax Office or the Inspectors, the ledgers must be printed at any time  
 3- The ledgers **shall not be** legalised beforehand. |

### PERIODIC SETTLEMENTS

1- VAT is settled periodically (monthly or quarterly) and with an annual balance.
2- It is calculated before the due date without the obligation to report the calculation on the ledgers and to print it.
**INTRA-COMMUNITY ACQUISITIONS**

"Invoices" (or "Transfer Documents") must be:

1) Progressively numbered and integrated (also on another paper) with:
   a) Amount in euro
   b) Taxable base
   c) Applicable Rate
   d) Amount of VAT

2) Registered at the same time on both ledgers: sales and purchases

3) Accounted in the month of registration as VAT due and VAT deductible

**INTRA-COMMUNITY SUPPLIES**

"Invoices" (or "Transfer Documents") must be:

a) Progressively numbered stating the sentence "non imponibile art. 41 D.L. 331/1993"

a) Registered on the sales ledger separately from domestic sales.

**LISTING OR INTRASTAT**

1- Listings are obligatory both for acquisitions and sales of goods and services.

2- It is the same form for both the tax and statistics sections. The latter is mandatory only over the threshold of 20 mln Euro both for sales and purchases.
**LISTINGS FOR IC TRANSACTIONS**

The taxable persons have to file with the Customs Agency by electronic means the recapitulative listing of the IC supplies and IC acquisitions of goods, and services other than the ones foreseen in the articles 7-quater and 7-quinquies of the DPR n. 633 (particular provisions) carried out to taxable persons established in other EU Member State and the ones (supplies of services) from them received.

<table>
<thead>
<tr>
<th>Intra 1 Form- SUPPLIES OF GOODS AND SERVICES</th>
<th>Intra 2 Form – ACQUISITION OF GOODS AND SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PERIODICITY</strong></td>
<td><strong>QUARTERLY</strong></td>
</tr>
<tr>
<td></td>
<td>Amount of the supplies or acquisitions of goods and services</td>
</tr>
<tr>
<td></td>
<td><strong>MONTHLY</strong></td>
</tr>
<tr>
<td></td>
<td>All the other cases (exceeding the threshold of Euro 50,000 for 1 of the two area goods and services)</td>
</tr>
</tbody>
</table>
LISTINGS FOR IC TRANSACTIONS

Obligation to file the listings of the IC transactions to the Customs Offices only by electronic means within the 25° of the following month

The operators obliged to file the listings can appoint, with a written proxy, third operators to file and sign their listings. It being understood that the obliged operator is liable for the content of the listings.

The written proxy has to be produced on request of the auditors.
INVOICING OF THE TRANSACTIONS

The invoice must be dated and numbered.

The numbering must be progressive and on a yearly basis

The following information is necessary on the invoice:

- Name and address of the operators (supplier and customer), of the fiscal representative and the (possible) fixed establishment for the non resident operators
- VAT number of the supplier

INVOICING OF THE TRANSACTIONS

- Nature, quality and quantity of the supplied goods and/or services
- Consideration amount and all the other possible data necessary to calculate the taxable amount
- VAT rate and VAT amount expressed in Euro
- VAT number of the customer in the case in which the customer is liable to pay VAT and statement of the related rule
**E-INVOICING**

It is possible to issue an electronic invoice as “immaterial document” without the necessity to print and send it on paper.

The agreement of the recipient is necessary

<table>
<thead>
<tr>
<th>According to the D. Lgs. 20 February 2004, n. 52, the electronic invoices:</th>
</tr>
</thead>
<tbody>
<tr>
<td>■ Must have the form of “<em>non modifiable static documents</em>”</td>
</tr>
<tr>
<td>■ Are issued with the purpose to guarantee the statement of the date, the authenticity and integrity, adding the reference of the time and the <em>electronic signature</em>;</td>
</tr>
<tr>
<td>■ Have to be produced, on paper and storage medium, on request of the auditors;</td>
</tr>
<tr>
<td>■ <em>Are stored on a kind of storage medium that guarantees the readability</em>.</td>
</tr>
</tbody>
</table>

- The research and the extraction of information from the data files must be allowed. In particular the extraction of the information regarding the names, the fiscal codes, the VAT number and the date.

---

**ELECTRONIC INVOICING**

According to the D. Lgs. 20 February 2004, n. 52, the electronic invoices:

- Must have the form of “*non modifiable static documents*”
- Are issued with the purpose to guarantee the statement of the date, the authenticity and integrity, adding the reference of the time and the *electronic signature*;
- Have to be produced, on paper and storage medium, on request of the auditors;
- *Are stored on a kind of storage medium that guarantees the readability*.
- The research and the extraction of information from the data files must be allowed. In particular the extraction of the information regarding the names, the fiscal codes, the VAT number and the date.
STORAGE OF THE ELECTRONIC INVOICES

The invoices:
   a) If sent by electronic means must be stored electronically;
   b) If delivered or sent on paper can be stored on paper or electronically.

The invoices can be sent from a foreign Country and can be stored in this foreign Country on condition of existence of a clause of mutual assistance with this Country.

The image has to be saved on an optical mean with the use of the laser technology (optical discs, DVD) and finishes with the electronic signature and the reference of the time.

12.VAT Warehousing

Art. 50-\textit{bis}, Law Decree 30 August 1993, n. 331
VAT WAREHOUSING

Goods admitted

- National goods
- EU goods

Goods not admitted

- Non community goods;
- Goods placed under temporary admission procedure;
- Goods stored in temporary custody warehouses until they receive a custom destination;
- Goods imported to discharge an inward processing relief through advance export (art. 115 (1) (b) EU Reg. 2913/92).

Goods must be “materially” introduced in the warehouse (Circular letter no. 16/D of 2006 of Customs)

VAT WAREHOUSING

According to the VAT warehousing regime the following transactions are carried out without application of VAT:

- IC acquisitions of goods introduced in a VAT warehouse;
- Import of NON EU goods with declaration at Customs of further introduction in a VAT warehouse;
- Supplies of goods to taxable persons identified for VAT in another MS executed by introduction of goods into the VAT warehouse;
- Supplies of goods listed in Annex V EU dir. 2006/112 to non EU customers not identified in another MS executed by introduction of goods into the VAT warehouse;
- Supplies of goods stored in the VAT warehouse;
- IC supplies of goods extracted from the warehouse;
- Exports of goods extracted from the warehouse;
- Transfer of goods from a VAT warehouse to another one;
- Storage and handling services relating to goods stored in the warehouse.
13. VAT Grouping
Art. 73 dpr no. 633/1972 and dm 13th December 1979
VAT GROUPING

“Consolidation” of the periodical VAT results of the individual companies

Each company keeps its VAT number and carries out transactions on its own

Requirements

Subjective requirement

Companies admitted

Objective requirement

Control

Companies set up in the following legal form: Spa, Srl, Sapa, i.e. corporations incorporated under the Italian law (both for the subsidiaries and for the parent company (Circular 28 February 1986, No. 16).

Non resident companies: EU companies provided that they are incorporated with the same legal status as provided for by Italian law (i.e. corporations and not partnerships) ((r.m. no. 22/E of 2005). VAT registration in Italy is required.

Ownership requirement

Ownership - directly or indirectly - of more than 50% of the stated capital.

Temporal requirement

Ownership since January 1st of the preceding fiscal year.
### VAT GROUPING

<table>
<thead>
<tr>
<th>Fullfilments</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Option to be filed with the Tax Authority including all the information required about the VAT Group. The form shall be filed within February 16th of each year (the option must be renewed every year).</td>
</tr>
<tr>
<td>- Transfer of the periodical VAT results by all the individual companies of the VAT group (including the parent company) to the parent company.</td>
</tr>
<tr>
<td>- Periodical payments to be carried out exclusively by the parent company.</td>
</tr>
<tr>
<td>- Filing of the annual VAT return by all the individual companies of the VAT group (including the parent company).</td>
</tr>
<tr>
<td>- Specific statement in the annual VAT return of the parent company summarizing the VAT group computation.</td>
</tr>
<tr>
<td>- Annual VAT refund to be filed exclusively by the parent company.</td>
</tr>
<tr>
<td>- Warranties for the VAT credits of each company offset in the procedure and for the VAT group.</td>
</tr>
</tbody>
</table>

### 14. Penalties
<table>
<thead>
<tr>
<th>TRANSGRESSION</th>
<th>PENALTY</th>
<th>REDUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Omitted periodical payment</td>
<td>30% of the non paid VAT amount</td>
<td>2.5% if paid within 30 days;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3% if paid later then 30 days, but within the</td>
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<tr>
<td></td>
<td></td>
<td>deadline for the filing of the annual VAT</td>
</tr>
<tr>
<td></td>
<td></td>
<td>return;</td>
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<tr>
<td></td>
<td></td>
<td>10% if paid within 30 days from the request of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>the Tax Office</td>
</tr>
<tr>
<td>Omitted filing of the annual VAT return (without</td>
<td>From 258 up to 1032 euro</td>
<td>21.5 euro (1/12 of 258 Euro) if the return is</td>
</tr>
<tr>
<td>VAT due)</td>
<td></td>
<td>filed within 90 days (later then 90 days the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>return is considered as omitted)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TRANSGRESSION</th>
<th>PENALTY</th>
<th>REDUCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Omitted filing of the annual VAT return (with VAT</td>
<td>From 120% up to 240% of the VAT due amount</td>
<td>10% of the VAT amount (1/10 of the minimum) if</td>
</tr>
<tr>
<td>due)</td>
<td></td>
<td>corrected within the deadline for the filing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>of the annual VAT return with a minimum of 516</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Euro (1/10 of 516 Euro)</td>
</tr>
<tr>
<td>Substantial irregularities on taxable transactions</td>
<td>From 100% up to 200% of the VAT amount with</td>
<td>10% of the VAT amount (1/10 of the minimum) if</td>
</tr>
<tr>
<td>(Invoicing and registration, overtaking of the</td>
<td>a minimum of 516 euro</td>
<td>corrected within the deadline for the filing</td>
</tr>
<tr>
<td>export license…)</td>
<td></td>
<td>of the annual VAT return with a minimum of 516</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Euro (1/10 of 516 Euro)</td>
</tr>
<tr>
<td>False annual VAT return (with impact on the VAT</td>
<td>From 100% up to 200% of the VAT amount</td>
<td>10% of the VAT amount (1/10 of the minimum) if</td>
</tr>
<tr>
<td>amount)</td>
<td></td>
<td>the annual VAT return is corrected within the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>deadline of the following annual VAT return</td>
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</tbody>
</table>
15. Other issues...

**“Export licence”**

- Taxable persons who export or carry out intra-Community Supplies of goods and services for an amount higher than 10% of their turnover can purchase and import goods of and services without paying VAT (Export license).
- The purchases and imports without VAT can be carried out for an amount equal to the exports registered in the previous calendar year, or the previous 12 months.

**WHAT CAN BE PURCHASED**

**GOODS AND SERVICES OF ANY NATURE CAN BE PURCHASED, EVEN INSTRUMENTAL GOODS.**
**“DOMESTIC TRIANGULATION”**

**IT First supplier, invoices iIT1 and delivers the goods directly to France to FR, final customer**

IT invoices IT1 without application of VAT according to the article 58, paragraph 1 of the DL 331/1993. The goods must be delivered or transported to FR by IT or on its behalf.

IT1 receives an invoice from IT without application of VAT and invoices FR for the IC supply according to the Article 41, paragraph 1.

IT1 has to file the Intrastat declaration.

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**…. other issues which have been implemented differently from the EU directive provisions**

- VAT on transport of persons and motorway tolls not deductible
- Long time in order to obtain the VAT refunds and necessity to file a bank/insurance warranty to obtain the money back