

Explanatory notes

VAT invoicing rules

(Council Directive 2010/45/EU)

- **Why explanatory notes?**

Explanatory notes aim at providing a better understanding of legislation adopted at EU level and in this case principally the Invoicing Directive (2010/45/EU). Published more than one year before the date of implementation of the new legislation, they are expected to allow Member States to transpose the legislation in a more uniform way and to provide business with the necessary information to adapt to the new rules in time.

They do not replace VAT Committee guidelines or an Implementing Regulation, both of which have their own roles in the legislative process.

- **What will you find in the explanatory notes?**

The "Explanatory Notes" are intended to be seen as a guidance tool that can be used to clarify the application of the VAT invoicing rules. They provide both a mixture of practical help as well as help in understanding the meaning of certain issues contained in the articles.

- **Characteristics of the explanatory notes**

The explanatory notes are a collaborative work: although the notes are issued by DG TAXUD for presentation on its website they are the result of discussions with both Member States and business.

Member States have contributed first through a Fiscalis seminar on invoicing held in Malta in February 2011 and then following discussions in the VAT Committee. Equally the views of business have been received through an ad-hoc business group of representative European organisations and for matters specific to electronic invoicing by way of Comité Européen de Normalisation (CEN).

They are not legally binding and are only practical and informal guidance about how EU law is to be applied on the basis of views of DG TAXUD. They do not represent the views of the Commission nor is the Commission bound by any of the views expressed therein.

Moreover, since the VAT invoicing legislation is based on a Directive, each Member State is responsible for the transposition of these provisions into national legislation and their correct application within its territory.

In the light of this and the basic principles of subsidiarity, national tax administrations have the principal responsibility for informing their taxable persons about the interpretation and application of these provisions.

It could, therefore, be expected that Member States may prepare their own national guides for the application of the new VAT invoicing rules. A list of the web addresses of the Member States tax authorities where national guidance may be available can be found at the following website.

http://ec.europa.eu/taxation_customs/common/links/tax/index_en.htm

The notes are not comprehensive: only certain invoicing issues have been included for which it was thought desirable to provide explanations. This is either because of the new rules from Directive 2010/45/EU or for clarifications that were thought needed in respect of rules in the VAT Directive.

They are a work in progress: these notes are not a final product but reflect the state of play at a certain point in time in accordance with the knowledge and experience available. Over time, it is expected that case law, VAT Committee guidelines and practice will complement the views given in the notes.

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EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Unit C1: VAT and other turnover taxes

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Subject: Requirements for paper and electronic invoices

Background and topics covered

Legal base: Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

References: Articles 217, 232 and 233, and recital 10

Topics covered:

1. Invoices must reflect an actual supply – recital 10 of Directive 2010/45/EU
2. Definition of e-invoices – Article 217
3. Customer acceptance – Article 232
4. Authenticity of origin – Article 233(1), third subparagraph
5. Integrity of content – Article 233(1), fourth subparagraph
6. Legibility – Article 233(1), first and second subparagraphs
7. Choice of means of ensuring authenticity of origin, integrity of content and legibility – Article 233(1), second subparagraph
8. Business controls – Article 233(1), second subparagraph
9. Reliable audit trail – Article 233(1), second subparagraph

10. Advanced electronic signature and EDI – Article 233(2)
11. Point in time of issue and end of storage period – Article 233(1), first subparagraph
12. Storage of invoices – (see document number D3)

Comments:

Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing aims to promote and further simplify invoicing rules by removing existing burdens and barriers. It establishes equal treatment between paper and electronic invoices (the same process for paper invoices can be applied for e-invoices) without increasing the administrative burden on paper invoices and has the aim to promote the uptake of e-invoicing by creating the freedom of choice in ensuring the authenticity of origin, integrity of content and legibility.

The Directive recognises the obligation for invoices to accurately reflect actual supplies of goods and services and therefore requires that the authenticity of the origin, the integrity of the content and the legibility of invoices are insured from their issue until the end of the period of storage. This can be achieved through business controls that provide a reliable audit trail between the invoice and the supply, and that assure the identity of the supplier or issuer of the invoice (authenticity of origin), that the VAT details (the invoice content required by the VAT Directive) on the invoice are unchanged (integrity of content) and that the invoice is legible.

The use of business controls creating a reliable audit trail between the invoice and the supply can be used to ensure the authenticity of origin, integrity of content and legibility for all invoices, whether paper or electronic. Other than business controls, advanced electronic signatures based¹ on a qualified certificate and created by a secure signature creation device or electronic data interchange (EDI) are examples of how the authenticity of the origin and integrity of the content of electronic invoices can be ensured through specific technologies. They provide a guarantee for businesses to ensure that the authenticity of the origin and the integrity of the content are met, and as such provide legal certainty. However, they are only examples and other technologies or procedures may be used.

The details of the aims of the rules on e-invoicing are contained in recitals 8 to 11. Articles 217, 232 and 233 of the VAT Directive have been changed and reflect these aims.

¹ Advanced electronic signatures based on a qualified certificate and created by a secure creation device are commonly referred to as "Qualified electronic Signatures".

In order to improve the understanding of those articles this additional guidance is provided. The aim is to help Member States by giving guidance on how to implement and apply the articles in national legislation in a more consistent manner and to help business with practical aspects.

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Topic: Invoices must reflect an actual supply

Reference: Recital 10 of Directive 2010/45/EU

Invoices must reflect actual supplies and their authenticity, integrity and legibility should therefore be ensured. Business controls can be used to establish reliable audit trails linking invoices and supplies, thereby ensuring that any invoice (whether on paper or in electronic form) complies with those requirements.

Comments:

Recital 10 mentions that an invoice must reflect an actual supply and, therefore, the authenticity of the origin, integrity of content and legibility should be ensured.

It is up to each taxable person to ensure that the invoice information being exchanged accurately reflects an actual supply. How this is done is the choice of the taxable person. Business controls creating a reliable audit trail between an invoice and a supply can be one way by establishing a reliable audit trail linking invoices and supplies.

As well, the text of Article 233(2) states that the taxable person can fulfil his obligation to ensure the authenticity of the origin and integrity of the content, for example, by using those technologies mentioned in that paragraph: an advanced electronic signature or electronic data interchange (EDI). These technologies cannot, though, of themselves show a supply took place.

The choice of methods to fulfil these obligations lies according to Article 233 on the taxable person.

Topic: Definition of an e-invoice

Reference: Article 217

For the purposes of this Directive, “electronic invoice” means an invoice that contains the information required in this Directive, and which has been issued and received in any electronic format.

Comments:

The only purpose for the definition of an electronic invoice is to clarify the acceptance of the customer under Article 232 and to illustrate the use of the option given to Member States in Article 247(2), on the storage of invoices.

An electronic invoice, exactly as it is with a paper invoice, must contain the elements as required by the VAT Directive.

Additionally, for an invoice to be considered according to the VAT Directive to be an electronic invoice, it needs to be issued and also received in any electronic format. The choice of format is determined by the taxable persons. This would include invoices as structured messages (such as XML) or other types of electronic format (such as an email with a PDF attachment or a fax received in electronic not paper format).

According to the definition, not all invoices created in an electronic format can be considered to be an "electronic invoice". Invoices created in an electronic format, through for instance accounting software or by word processing software, that are sent and received on paper are not electronic invoices.

On the other hand invoices created in paper form, that are scanned, sent and received via e-mail can be considered as electronic invoices.

The type of electronic format of the invoice should not be important but only the fact that the invoice is in an electronic format when it is issued and received. This would allow electronic invoices to be sent and received in one format, and then converted in to another format.

An invoice should be regarded as issued when the supplier or a third party acting on behalf of the supplier, or the customer for self-billed invoices, makes the invoice

available so that it can be received by the customer. This may mean the electronic invoice is transmitted directly to the customer through for instance email or a secure link, or indirectly through for instance one or several service providers, or that it is made available and accessible to the customer through a web portal or any other method.

It is important to establish a date when the invoice is considered to be issued to fulfil the supplier's obligation to issue an invoice within the required period (Article 222) but also for the recipient's obligation in respect of the storage of invoices.

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Topic: Customer acceptance

Reference: Article 232

The use of an electronic invoice shall be subject to acceptance by the recipient.

Comments:

The specific mention that the use of electronic invoices should be accepted by the customer mainly finds its justification in the technical requirements needed to receive an electronic invoice or the customer's ability to ensure the authenticity, integrity and legibility that might need to be arranged to receive electronic invoices and which do not exist for paper invoices.

Given that paper and electronic invoices should be treated equally, acceptance by the customer of an electronic invoice may be determined in a similar manner as a paper invoice could be considered accepted by the customer. This may include any written acceptance, whether formal or not, or by tacit agreement through, for instance, the processing or payment of the received invoice.

In any case the decision to use electronic invoices remains ultimately a matter for the agreement between the trading parties.

Topic: Authenticity of origin

Reference: Article 233(1), third subparagraph

"Authenticity of the origin" means the assurance of the identity of the supplier or the issuer of the invoice.

Comments:

The authenticity of the origin of an invoice is an obligation for the taxable person receiving the supply of goods or services as well as for the taxable person making the supply. Both can independently of each other ensure the authenticity of the origin.

There are four elements to be considered.

1. Assurance by the supplier

The supplier must be able to provide assurance that the invoice was indeed issued by him or in his name and on his behalf. This can be achieved by having a record of the invoice in the accounting documents. Where there is self-billing or a third party issues the invoice this may be evidenced through supporting documents.

2. Assurance by the customer

The taxable person receiving the supply must be able to ensure that the invoice received is from the supplier or the issuer of the invoice.

This gives **two alternatives** to the taxable person to choose from. The first alternative concerns verifying the correctness of the information concerning the supplier's identity mentioned on an invoice. The second alternative concerns ensuring the identity of the issuer of the invoice.

a) Assurance of the identity of the supplier

The identity of the supplier is a detail that is always required on the invoice. This, though, is not sufficient in itself to assure the authenticity of the origin. The customer should in this case ensure that the supplier mentioned on the invoice has in reality carried out the supply of the goods or services to which the invoice refers. The taxable person

can apply any business controls creating a reliable audit trail between an invoice and a supply of goods or services to fulfil this obligation.

b) Assurance of the identity of the issuer of the invoice

The taxable person can choose to ensure the identity of the issuer of an invoice by for example an advanced electronic signature or EDI. Nevertheless, this is without prejudice to recital 10 of Directive 2010/45/EU which states, first and foremost, that invoices should reflect actual supplies.

Assuring the identity of the issuer of the invoice can apply equally to cases where the supplier has issued the invoice as well as to those where a third party has issued the invoice or in the case of self-billing.

Topic: Integrity of content

Reference: Article 233(1), fourth subparagraph

"Integrity of content" means that the content required according to this Directive has not been altered.

Comments:

The invoice content for which integrity must be ensured is that defined in the VAT Directive.

The integrity of the content of an invoice is an obligation for both the taxable person making the supply as well as for the taxable person receiving the supply. They can both independently of each other choose the way in which they fulfil this obligation, or they can agree together through for instance a certain technology like EDI or advanced electronic signatures, to ensure the content is unchanged. The taxable person can choose whether he applies, for example, business controls which create a reliable audit trail between an invoice and a supply or specific technologies in fulfilling the obligation.

That the content of the invoice has not been altered (integrity of the content) does not relate to the format of an electronic invoice. Providing that the invoice content as required by the VAT Directive is not changed, the format in which such content is held may be converted to other formats. This allows the customer or a service provider acting on his behalf, to convert or present in a different way the electronic data in order to fit with his own IT system or because of technological changes over time.

In the case where the taxable person has chosen to fulfil the requirement of integrity of the content by using an advanced electronic signature, when converting from one format to another, the change must be recorded in an audit trail.

Even if Member States use the option in Article 247(2) to require that the invoice is kept in the original form, either paper or electronic, the format of an invoice can in any case still be changed.

Form is taken to mean the type of invoice (paper or electronic) and format relates to the presentation of the electronic invoice. A format change can for instance be a change to

the way the date is presented e.g. dd/mm/yy to yyyy/mm/dd, or of the file type itself e.g. XML.

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Topic: Legibility

Reference: Article 233(1), first and second subparagraphs

*The authenticity of the origin, the integrity of the content and the **legibility** of an invoice, whether on paper or in electronic form, shall be ensured from the point in time of issue until the end of the period for storage of the invoice.*

*Each taxable person shall determine the way to ensure the authenticity of the origin, the integrity of the content and the **legibility** of the invoice. This may be achieved by any business controls which create a reliable audit trail between an invoice and a supply of goods or services.*

Comments:

Legibility of an invoice means that the invoice is human readable. It must remain so until the end of the storage period. The invoice should be presentable in a style where all the VAT contents of the invoice are clearly readable, on paper or on screen, without the need for excessive scrutiny or interpretation, e.g. EDI messages, XML messages and other structured messages in the original format are not considered human readable (after a conversion process they may be considered human readable – see below).

For electronic invoices, this condition will be considered as being fulfilled if the invoice can be presented on request within a reasonable time in the same manner as is required without delay in Article 245(1) – including after a conversion process – in a human readable form on screen or through printing. It should be possible to check the information between the original electronic file and the readable document presented has not changed.

In order to ensure legibility, a suitable and reliable viewer for the e-invoice format should be available throughout the entire storage period.

The legibility of an electronic invoice from the point of issue until the end of the period of storage can be ensured by any means, but advanced electronic signatures and EDI, as mentioned in Article 233(2) are not sufficient by themselves to ensure legibility.

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Topic: Choice of means of ensuring the authenticity of origin, integrity of content and legibility

Reference: Article 233(1), second subparagraph

Each taxable person shall determine the way to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice. This may be achieved by any business controls which create a reliable audit trail between an invoice and a supply of goods or services.

Comments:

Both the supplier and customer are free to choose how to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice. The choice should not be restricted by Member States.

Where Member States provide guidance it should be made clear that this only represents guidance and it does not restrict the choice of the taxable person.

The three examples of procedures or technologies listed in Directive 2010/45/EU (business controls creating a reliable audit trail, advanced electronic signatures and EDI), should not prevent other technologies or procedures from being used if they meet the conditions of ensuring the authenticity of the origin, the integrity of the content and the legibility of the invoice.

Topic: Business controls

Reference: Article 233(1), second subparagraph

*Each taxable person shall determine the way to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice. This may be achieved by any **business controls** which create a reliable audit trail between an invoice and a supply of goods or services.*

Comments:

Business control is a wide concept. It is the process created, implemented and kept up to date by those responsible (management, personnel and owners) for providing reasonable assurance on financial, accounting and regulatory reporting and that legal requirements are complied with.

Specifically, in the context of Article 233, it should be taken to mean 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.

The business controls should be appropriate to the size, activity and type of taxable person and should take account of the number and value of transactions as well as the number and type of suppliers and customers. Where relevant other factors should also be taken into consideration.

An example of a business control is the matching of supporting documents. The importance attached to supporting documents should reflect factors such as the degree of independence of the issuer of the supporting documents from the taxable person and the weight attached to those documents in the accounting process. An important aspect of this type of business control is that the invoice is checked as a document within the business and accounting process and is not treated as an independent stand alone document.

It is important to keep in mind that invoices, whether paper or electronic, are generally only one document in a set of documents (e.g. purchase order, contract, transport document, payment notice etc.) related to and documenting a transaction.

For the supplier, the invoice could be matched with a purchase order, transport documents and receipt of payment. For the customer, the invoice could be matched with the approved purchase order (purchase confirmation note), the delivery note, the payment and remittance advice. However, these are only examples of typical documents that may be available and many other documents could be matched with the invoice.

Topic: Reliable audit trail

Reference: Article 233(1), second subparagraph

*Each taxable person shall determine the way to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice. This may be achieved by any business controls which create a **reliable audit trail** between an invoice and a supply of goods or services.*

Comments:

Within accounting, an audit trail can be described 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.

An audit trail can be described as reliable when the link between supporting documents and processed transactions is easy to follow (through having sufficient detail to link the documents), compliant with stated procedures and reflects the processes that have actually occurred. This can be achieved with for example third party documents e.g. bank statements, documents from the customer or supplier (second party documents) and internal controls e.g. segregation of duties.

For VAT purposes an audit trail should, as stipulated in the second subparagraph of Article 233(1), provide an auditable link between an invoice and a supply of goods or services to enable the checking of whether an invoice reflects that a supply of goods or services has taken place.

The means by which a taxable person can demonstrate the link between an invoice and a supply of goods or services is left to the discretion of the taxable person. The Member State may issue guidance to help the taxable person establish a reliable audit trail but this guidance must not include any mandatory requirements. An example could be a set of different documents such a purchase order, transport documents and the invoice itself with the trace of the matching of those documents or even the mere fact that the three documents actually match.

As with business controls, a reliable audit trail should be appropriate to the size, activity and type of taxable person and should take account of the number and value of transactions as well as the number and type of suppliers and customers. Where relevant other factors should also be taken into consideration, such as requirements for financial reporting and auditing.

Topic: Advanced electronic signature and EDI

Reference: Article 233(2)

Other than by way of the type of business controls described in paragraph 1, the following are examples of technologies that ensure the authenticity of the origin and the integrity of the content of an electronic invoice:

*(a) an **advanced electronic signature** within the meaning of point (2) of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (*), based on a qualified certificate and created by a secure signature creation device, within the meaning of points (6) and (10) of Article 2 of Directive 1999/93/EC;*

*(b) **electronic data interchange (EDI)**, as defined in Article 2 of Annex 1 to Commission Recommendation 1994/820/EC of 19 October 1994 relating to the legal aspects of electronic data interchange (**), where the agreement relating to the exchange provides for the use of procedures guaranteeing the authenticity of the origin and integrity of the data.*

Comments:

The two options, an advanced electronic signature and EDI, are only examples of electronic invoicing technologies to ensure the authenticity of the origin and the integrity of the content and cannot be mandatory requirements. Where electronic invoices do not meet the conditions of Article 233(2)(a) or (b) they may still meet the requirements of business controls in the second subparagraph of Article 233(1) or may fulfil the condition of authenticity of the origin and integrity of the content through an alternative technology (including for instance advanced electronic signatures which are not based on a qualified certificate) or procedure.

EDI is based on an agreement to exchange structured data in accordance with Commission Recommendation 1994/820/EC and can refer to any standardised format. It does not refer only to EDIFACT, which is just one example of such formats.

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Topic: Point in time of issue and end of storage period

Reference: Article 233(1), first subparagraph

*The authenticity of the origin, the integrity of the content and the legibility of an invoice, whether on paper or in electronic form, shall be ensured from the **point in time of issue until the end of the period for storage** of the invoice.*

Comments:

The period for which the authenticity of the origin, the integrity of the content and the legibility of the invoice must be ensured is from the time of issue until the end of the storage period. The storage period is that determined by the Member State according to the VAT Directive (Article 247). The deadline for the time of issue of an invoice is also that determined by the VAT Directive (Article 222).

At all moments between the time of issue and the end of the storage period the taxable person must be able to ensure the authenticity of the origin, the integrity of the content and the legibility of the invoice. However, as business practices change over time, the means by which the authenticity of the origin, the integrity of the content and the legibility of the invoice are ensured can also change.



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Indirect Taxation and Tax administration
Unit C1: VAT and other turnover taxes

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Subject: Issue of invoices

Topics covered

Legal base: Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

References: Articles 219a, 220, 221, 222 and 224

Topics covered

1. Article 219a – Which Member State's rules are applicable?
2. Article 221(3) – Applicable Member State's invoicing rules for exempt supplies
3. Articles 220(2) and 221(2) – Invoicing rules for exempt financial supplies (Article 135(1)(a) to (g))
4. Article 224(1) – Self-billed invoices

Topic: Which Member State's rules are applicable?

Reference: Article 219a

Without prejudice to Articles 244 to 248, the following shall apply:

(1) Invoicing shall be subject to the rules applying in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of Title V.

(2) By way of derogation from point (1), invoicing shall be subject to the rules applying in the Member State in which the supplier has established his business or has a fixed establishment from which the supply is made or, in the absence of such place of establishment or fixed establishment, the Member State where the supplier has his permanent address or usually resides, where:

(a) the supplier is not established in the Member State in which the supply of goods or services is deemed to be made, in accordance with the provisions of Title V, or his establishment in that Member State does not intervene in the supply within the meaning of Article 192a, and the person liable for the payment of the VAT is the person to whom the goods or services are supplied.

However where the customer issues the invoice (self-billing), point (1) shall apply.

(b) the supply of goods or services is deemed not to be made within the Community, in accordance with the provisions of Title V.

Comments:

Where businesses make supplies to customers in other Member States it may be difficult to establish which Member State's invoicing rules apply. To clarify which rules apply and provide legal certainty for businesses Article 219a is introduced to the VAT Directive.

The objective of Article 219a is to provide clear rules on which Member State should establish the invoicing rules in relation to VAT supplies. These rules exclude those related to the storage of invoices but apply to other invoicing rules regarding the issue,

content or simplification measures of invoices when there is an option for the Member State or the invoice requirement relates to a national matter.

For example the option to extend the time period for summary invoices or to require self-billed invoices to be issued in the name and on behalf of the taxable person is at the discretion of Member States. The Member State that applies these and other options is the Member State referred to in Article 219a, unless it is expressly stated elsewhere.

In terms of invoicing requirements such as the national reference for exempt supplies or the currency of the VAT amount, while not options for the Member State, these should still be clarified with reference to a particular Member State. In these and other cases where the appropriate national requirements are needed the relevant Member State should be that referred to in Article 219a.

The basic rule is that the Member State where the supply takes place sets the invoicing rules.

However, there are two exceptions to the basic rule which are contained in Article 219a(2)(a) and (2)(b). These are for cross-border supplies subject to the reverse charge and for supplies taxable outside the EU. In these cases the invoicing rules of the Member State where the supplier is established or has a fixed establishment from which the supply is made or has his permanent address or usually resides shall apply.

Although not exhaustive the tables in annex provide illustrative examples of which Member States' rules apply.

For suppliers not established in the EU making taxable supplies of goods or services in the EU, the exceptions do not apply and the basic invoicing rule always applies, that being the Member State where the supply takes place.

Equally the basic rule will always apply in the case of self-billed invoices where the customer issuing the invoice is also liable to pay the VAT under the reverse charge procedure. Thus the Member State where the supply takes place will set the invoicing rules.

In the case of a supply from a non-EU country to an EU Member State which results in an importation of goods, the place of the supply of the goods is outside the EU. As the supply does not take place within the EU and when the supplier is outside the EU no Member State's invoicing rules will apply. Additionally, there is no invoicing obligation relating to the importation of goods into the EU.

Where the customer is liable for payment of the VAT under the reverse charge procedure and he appoints a tax representative under Article 204 of the VAT Directive, Article 219a(2)(a) should be applied as if the customer was still liable for the payment of VAT. Where in this case the tax representative also issues the invoice it should be treated as if the customer had issued the invoice and so Article 219a(1) will apply.

Annex

Supply of goods

Type of supply	Member State or country of supplier	Member State or country of customer	Movement of goods	Member State or country of taxation	Member State of application for Article 219a	Article 219a reference
Domestic supply of goods	A	A	A to A	A	A	Point (1)
Exempt intra-Community supply	A	B	A to B	A	A	Point (1)
Exempt intra-Community supply with self-billed invoice	A	B	A to B	A	A	Point (1)
Distance sales	A	B	A to B	B	B	Point (1)
Cross-border supply to private individual (below threshold for distance sales)	A	B	A to B	A	A	Point (1)
Second leg of an intra-Community triangular supply	B	C	A to C	C	B	Point (2)(a)

Customer liable to pay the VAT under Article 194	A	B	B to B	B	A	Point (2)(a)
Cross-border supply of gas or electricity	A	B	A to B	B	A	Point (2)(a)
Export	A	Third country	A to third country	A	A	Point (1)
Supply outside the EU	A	Third country	In third country	Outside the EU	A	Point (2)(b)
Import	Third country	A	Third country to A	Outside the EU	Outside the EU	Point (1)

Supply of services

Type of supply	Article	Member State of supplier	Member State or country of customer	Member State or country of taxation	Member State of application for Article 219a	Article 219a reference
General B2B supply of services	44	A	A	A	A	Point (1)
Cross-border B2B supply of services	44 and 196	A	B	B	A	Point (2)(a)
Cross-border B2B supply of services and customer issues the	44, 196 and 224	A	B	B	B	Point (1)

invoice						
General B2C supply of services	45	A	B	A	A	Point (1)
Services connected with immovable property (property in Member State C, no reverse charge)	47	A	B	C	C	Point (1)
B2B services for customer outside the EU	44	A	Third country	Third country	A	Point (2)(b)
Certain B2C services for customer outside the EU	59	A	Third country	Third country	A	Point (2)(b)

Topic: Applicable Member State's invoicing rules for exempt supplies

Reference: Article 221(3)

Member States may release taxable persons from the obligation laid down in Article 220(1) or in Article 220a to issue an invoice in respect of supplies of goods or services which they have made in their territory and which are exempt, with or without deductibility of the VAT paid in the preceding stage, pursuant to Articles 110 and 111, Article 125(1), Article 127, Article 128(1), Article 132, points (h) to (l) of Article 135(1), Articles 136, 371, 375, 376 and 377, Articles 378(2) and 379(2) and Articles 380 to 390b.

Background:

Article 219a establishes which Member State's invoicing rules apply.

However, Article 221(3) provides invoicing options for Member States when the supply takes place in that Member State. This raises an issue where two rules combine, such as that between Article 219a which sets which Member State's invoicing rules apply and Article 221(3) which allows other Member States to apply options.

Comments:

For a cross-border exempt supply mentioned in Article 221(3) for which the supplier is not established in the Member State where the supply takes place (A) and the customer is liable for payment of the VAT (reverse charge) the Member State where the supplier is established (B) sets the invoicing rules (Article 219a(2)(a)). However, the Member State where the supply is made (A) may release the taxable person from issuing an invoice (Article 221(3)). Since in this case that Member State (A) is not the Member State that sets the invoicing rules (B), there will always be a requirement to issue an invoice for these supplies.

In the above case the mention "reverse charge" according to Article 226(11a) should be mentioned on the invoice (see also document reference C3).

Only when the exempt supply mentioned in Article 221(3) is made in the same Member State that sets the invoicing rules in Article 219a, may that Member State release the taxable person from issuing an invoice.

In conclusion these cross-border B2B exempt supplies will always require an invoice.

Topic: Invoicing rules for exempt insurance and financial supplies (Article 135(1)(a) to (g))

References: Articles 220 and 221

Article 220(2)

By way of derogation from paragraph 1, and without prejudice to Article 221(2), the issue of an invoice shall not be required in respect of supplies of services exempted under points (a) to (g) of Article 135(1).

Article 221(2)

Member States may impose on taxable persons who have established their business in their territory or who have a fixed establishment in their territory from which the supply is made, an obligation to issue an invoice in accordance with the details required in Article 226 or 226b in respect of supplies of services exempted under points (a) to (g) of Article 135(1) which those taxable persons have made in their territory or outside the Community.

Background:

In general invoices are required for taxable supplies between taxable persons, with the option for Member States to allow certain exempt supplies to be released from this invoicing obligation.

Directive 2010/45/EU for supplies of services exempt under points (a) to (g) of Article 135(1) changes the rules so that these supplies no longer require an invoice (Article 220(2)) but Member States may, if they choose, impose an invoicing obligation. The invoice can be required only where the supplier is established in that Member State and the place of taxation is there, or it is supplied outside the EU.

Comments:

Member States may not require an invoice for supplies exempt under points (a) to (g) of Article 135(1) when the supplier – established in their territory or who has a fixed establishment in their territory from which the supply is made – makes such a supply taxable in another Member State.

When the place of taxation and the establishment of the supplier making the supply are in the same Member State then for B2B and B2C supplies that Member State may require an invoice.

In conclusion the option in Article 221(2) can be used for domestic supplies and supplies outside the EU but not in respect of B2B transactions with other Member States.

Topic: Self-billed invoices

Reference: Article 224(1)

*Invoices may be **drawn up by the customer** in respect of the supply to him, by a taxable person, of goods or services, where there is a prior agreement between the two parties and provided that a procedure exists for the acceptance of each invoice by the taxable person supplying the goods or services. Member State may require that such invoices be issued in the name and on behalf of the taxable person.*

Background:

The rules on self-billed invoices should have a more uniform application with the removal of many of the options and conditions that Member States can apply. Although the condition for a prior agreement between the buyer and seller as well as a procedure for acceptance of each invoice remains, the reference to the Member State determining those terms and conditions is deleted. Thus clarification on what is meant by prior agreement and acceptance of each invoice is now required.

Comments:

The terms and conditions of the prior agreement and the acceptance procedures for each invoice between the supplier and the customer as laid down in Article 224 shall be determined by the two parties.

Member States cannot prescribe the type of agreement between the two parties. Nevertheless, a "prior" agreement means that the agreement is made before the commencement of issuing self-billed invoices. Also, on request from the tax authorities the two parties must be able to show that a prior agreement existed. With this in mind, it is recommended that for the legal certainty of the trading parties evidence of the prior agreement is kept.

The acceptance procedure of each invoice can be explicit or implicit. It can be agreed and described through the prior agreement or it can be evidenced through the processing of the invoice or the receipt of payment by the supplier of the goods or services.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Unit C1: VAT and other turnover taxes

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Subject: Content of invoices

Background and topics covered

Legal base: Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

References: Articles 91, 226, 226b and 230

Topics covered:

1. Article 226(2) – Sequential numbering
2. Article 226(7a) – Cash accounting
3. Article 226(11) – Exempt supplies
4. Articles 91 and 230 – Conversion of the VAT amount into the national currency
5. Article 226b – Simplified invoices

Comments:

The content of the invoice is harmonised at EU level with very few options for Member States. With the changes that have been made to the content of invoices by Directive 2010/45/EU, primarily to reduce burdens on business, these need to be clarified as well as existing articles, which although not changed, lead to differences in interpretation across the EU.

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Topic: Sequential numbering

Reference: Article 226

(2) a sequential number, based on one or more series, which uniquely identifies the invoice;

Comments:

The sequential number required in Article 226(2) to uniquely identify the invoice may be based on one or more series of numbers, which may include as well alphanumeric characters. The choice of using a different series of numbers lies with the business and it may be used for instance for each branch, or for each type of supply or for each customer, and covers as well self-billed invoices or invoices issued by third parties..

Where Member States choose to require sequential numbers for simplified invoices the basis for a different series of numbers remains the same as with a full VAT invoice.

Topic: Cash accounting

Reference: Article 226

(7a) where the VAT becomes chargeable at the time when the payment is received in accordance with Article 66(b) and the right of deduction arises at the time the deductible tax becomes chargeable, the mention "Cash accounting";

Comments:

The cash accounting scheme allows the supplier to declare the VAT in the tax period in which the payment for the supplies of goods or services is received or made. In order for the customer to know when his VAT becomes deductible the supplier should mention on the invoice that he is using the "Cash accounting" scheme.

There are two conditions to be fulfilled for the supplier to mention "Cash accounting" on the invoice.

1. The supplier meets the conditions and is applying the cash accounting scheme.
2. For the customer of a taxable person applying such a cash accounting scheme, the right to deduct VAT arises at the moment the tax is due by the supplier.

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Topic: Exempt supplies

Reference: Article 226

(11) in the case of an exemption, reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt;

Comments:

The taxable person has the choice for exempt supplies (Note: exempt supplies are also in some cases referred to as "zero-rated" when there is a right to deduct VAT) to mention a reference to the appropriate article in the VAT Directive or national law, but may also choose to provide any other reference that shows the supply is exempt. In the case where the taxable person chooses to provide any other reference, the word "Exempt" shall be sufficient as the reference that a supply of goods or services is exempt. Other wording as appropriate may also be used.

When the supply is subject to the reverse charge, and that supply is also an exempt supply in the Member State of taxation, it is sufficient to only mention the wording "Reverse charge" as contained in Article 226(11a).

Topic: Conversion of the VAT amount into the national currency

References: Articles 91 and 230

Article 91 second paragraph

Member States shall accept instead the use of the latest exchange rate published by the European Central Bank at the time the tax becomes chargeable. Conversion between currencies other than the euro shall be made by using the euro exchange rate of each currency. Member States may require that they be notified of the exercise of this option by the taxable person.

Article 230

The amounts which appear on the invoice may be expressed in any currency, provided that the amount of VAT payable or to be adjusted is expressed in the national currency of the Member State, using the conversion rate mechanism provided for in Article 91.

Comments:

Where the VAT amount on the invoice is converted into the national currency as required by Article 230 and this is done using the exchange rate published by the European Central Bank (ECB), a Member State that requires this notification may only require one notification before the taxable person begins to use the rate of the ECB.

A taxable person is not required to apply the conversion rate of the ECB to all invoices even where the Member State requires notification for use of the ECB rate.

Article 230 does not allow any requirement for a reference on the invoice, such as the exchange rate used or the method of conversion, as these would be details above those required in Article 226.

Topic: Simplified invoices

Reference: Article 226b

As regards simplified invoices issued pursuant to Article 220a and Article 221(1) and (2), Member States shall require at least the following details:

- (a) the date of issue;*
- (b) identification of the taxable person supplying the goods or services;*
- (c) identification of the type of goods or services supplied;*
- (d) the VAT amount payable or the information needed to calculate it;*
- (e) where the invoice issued is a document or message treated as an invoice pursuant to Article 219, specific and unambiguous reference to that initial invoice and the specific details which are being amended.*

They may not require details on invoices other than those referred to in Articles 226, 227 and 230.

Comments:

The contents of simplified invoices that taxable persons may issue should contain at least the details in Article 226b but not all the details in Article 226, otherwise the objective of reducing burdens on business is not met. More details on a simplified invoice than those required in Article 226 is not allowed.

This will apply in the case of simplified invoices allowed under Article 220a for amounts lower than EUR 100 or for credit notes, under Article 238 after Member States have consulted the VAT Committee and under Articles 221(1) and (2) for B2C supplies or exempt insurance and financial supplies.

However, simplified invoices cannot be allowed for distance sales, exempt intra-Community supplies of goods or for cross-border reverse charge supplies (Articles 220a(2) and 238(3)).



EUROPEAN COMMISSION
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TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Unit C1: VAT and other turnover taxes

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Subject: Storage of invoices

Background and topics covered

Legal base: Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing

References: Articles 247 and 248a

Topics covered:

1. Article 247 – Storage period
2. Article 248a – Translation and languages used on invoices
3. Article 247 – Medium of storage

Comments:

There are no major changes regarding the storage of invoices in Directive 2010/45/EU. However, in certain cases changes elsewhere in the invoicing rules, in particular Article 233, have an impact on the interpretation of the storage rules.

There are also instances where clarification of the existing rules is needed.

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Topic: Storage period

Reference: Article 247(1)

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.

Comments:

The period of storage of invoices is set by Member States according to Article 247(1). Article 219a does not apply as regards the storage of invoices.

The Member State may only set the storage period for the supplier of goods or services when the place of supply is in that Member State. A supplier making supplies taxable in another Member State, such as under the reverse charge procedure, should comply with the storage rules in the Member State where the supply takes place.

In addition, for a taxable person receiving supplies, the invoice storage period is set by the Member State where that business is established.

Topic: Translation and language used on invoices

Reference: Article 248a

For control purposes, and as regards invoices in respect of supplies of goods or services supplied in their territory and invoices received by taxable persons established in their territory, Member States may, for certain taxable persons or certain cases, require translation into their official languages. Member States may, however, not impose a general requirement that invoices be translated.

Comments:

Language used on invoices

The VAT legislation does not prescribe the use of any language. Where a language is used other than a national language the Member State must not restrict the right of deduction only because of the language used on the invoice. Translations can however be requested in certain cases during an audit.

Translation of invoices

Regarding the option in Article 248a for Member States to require the translation of invoices, this should relate only to the specific invoices or to invoices of specific taxable persons that need to be checked for control purposes. Member States cannot implement in advance any general obligation that all invoices, for instance of a certain type or by a certain taxable person, are translated in to a national language.

Topic: Medium of storage

Reference: Article 247(2)

In order to ensure that the requirements laid down in Article 233 are met, the Member State referred to in paragraph 1 may require that invoices be stored in the original form in which they were sent or made available, whether paper or electronic. Additionally, in the case of invoices stored by electronic means, the Member State may require that the data guaranteeing the authenticity of the origin of the invoices and the integrity of their content, as provided for in Article 233, also be stored by electronic means.

Comments:

Article 247(2) allows Member States to require that the storage of invoices is kept in the original form in which they were sent. This means paper invoices can be required to be stored in paper form and electronic invoices in electronic form.

For electronic invoices it does not prevent the format being changed, which may often be required due to the evolution of storage technologies. Any format change must meet the requirements referred to in Article 233(1).

Where invoices are stored by electronic means, Article 247(2) allows Member States to require that the data guaranteeing the authenticity of the origin, the integrity of the content and legibility of the invoice is also stored by electronic means. Where the taxable person uses an advanced electronic signature or EDI the data guaranteeing the authenticity of origin and integrity of content will be that associated with those particular technologies. .

Where the taxable person uses business controls which create a reliable audit trail between the invoice and the supply of goods or services, the data referred to is that of the supporting documents. However, under Article 233 it is the choice of business how to guarantee the authenticity of origin and integrity of content.

Where invoices are kept in paper form the taxable person may choose to keep supporting documents electronically but the tax authorities cannot oblige him to do so. Equally, supporting documents kept in electronic form cannot be required to be held in paper form.

Taxable persons may as a part of their business control keep the checks they perform between the supporting documents and invoice but this is not a requirement for VAT purposes.