

Unofficial translation

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MINISTERO DELL'ECONOMIA E DELLE FINANZE

DECREE 23 January 2004

Manners to accomplish fiscal obligations relevant to electronic documents and to their copy on various media.

THE MINISTRY OF ECONOMY AND FINANCE

Visti gli articoli da 2214 a 2220 del codice civile in materia di scritture contabili, nonché l'art. 2712 dello stesso codice in materia di validità probatoria delle riproduzioni meccanografiche;

Visto il decreto del Presidente della Repubblica 26 ottobre 1972, n. 642, concernente la disciplina dell'imposta di bollo;

Visto il decreto legislativo 9 luglio 1997, n. 237, recante «Modifica della disciplina in materia di servizi autonomi di cassa degli uffici finanziari»;

Visto il decreto del direttore del Dipartimento delle entrate del Ministero delle finanze 31 luglio 1998, e successive modificazioni, concernente «Modalità tecniche di trasmissione telematica delle dichiarazioni e dei contratti di locazione e di affitto da sottoporre a registrazione, nonché di esecuzione telematica dei pagamenti»;

Visto il decreto del Presidente del Consiglio dei Ministri 8 febbraio 1999, recante «Regole tecniche per la formazione, la trasmissione, la conservazione, la duplicazione, la riproduzione e la validazione, anche temporale, dei documenti informatici ai sensi dell'art. 3, comma 1, del decreto del Presidente della Repubblica 10 novembre 1997, n. 513»;

Visto il decreto del Presidente della Repubblica 28 dicembre 2000, n. 445, recante «Testo unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa» e, in particolare, l'art. 10, comma 6, in materia di forma ed efficacia del documento informatico, come sostituito dall'art. 6 del decreto legislativo 23 gennaio 2002, n. 10, concernente «Attuazione della direttiva 1999/93/CE relativa ad un quadro comunitario per le firme elettroniche», che prevede l'emanazione di un decreto del Ministro dell'economia e delle finanze per definire le modalità di assolvimento degli obblighi fiscali relativi ai documenti informatici ed alla loro riproduzione su diversi tipi di supporto;

Vista la deliberazione dell'Autorità per l'informatica nella pubblica amministrazione n. 42 del 13 dicembre 2001, che detta le regole tecniche per la riproduzione e la conservazione di documenti su supporto ottico idoneo a garantire la conformità dei documenti agli originali;

Ritenuta la necessità di stabilire le modalità di attuazione degli obblighi fiscali inerenti ai documenti informatici e alla loro riproduzione su diversi tipi di supporto ottico o altro tipo di supporto idoneo;

Sentito il Centro nazionale per l'informatica nella pubblica amministrazione;

Commento [FR1]: These are not translated, since they are reference to the rules of law on which the present Decree draws its validity.

Decrees:

Art. 1.

Definitions

1. For the purposes of this decree, consistently with what provided for by the decree by the President of the Republic 28 December 2000, No 445, by the decree by the President of the Council of Ministers 8 February 1999 and by the Deliberation of the Authority for IT in the public administration No 42 od 13 December 2001, henceforth called AIPA, it is meant as:
 - a) “document”: analogical or digital representation of acts, deeds, and data, that is intelligible directly or through an electronic procedure, that allows for acknowledging it in the time;
 - b) “analogic document”: it may be original and copy and it is formed by using a physical quantity assuming continuous values, such as tracks on paper, images on a movie, magnetic recording on a tape;
 - c) “original analogic document”: analogic document that may be unique and non unique is, in the latter case, it is possible to go back to its content through other writings or documents the conservation of which is mandatory, even if held by third parties;
 - d) “digital document”: texts, images, structured data, drawings, programs, movie films, fomet through a physical quantity assuming binary values, obtained through an electronic procedure, the origin of which can be identified;
 - e) “electronic document”: electronic representation of acts, deeds, or data juridically relevant;
 - f) “electronic signature”: data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication;
 - g) “advanced electronic signature”: electronic signature obtained through an electronic procedure that ensures the unique link to the signatory and the unique identification of the latter, created using means that the signatory can maintain under his sole control; and linked to the data to which it relates in such a manner that any subsequent change of the data is detectable;
 - h) “qualified electronic signature”: advanced electronic signature based on a qualified certificate and created using a secure signature-creation device;
 - i) “digital signature”; particular type of qualified electronic signature based on a system made of asymmetric key pairs, one public and one private, that allows the holder through his private key, and the recipient through the public key, respectively, to make clear and to verify the authenticity and integrity of an electronic document or of an electronic documents set;
 - l) “qualified certificate”: electronic certificate consistent with requirements laid down in Annex I of the Directive 1999/93/EC, issued by a certification service provider meeting the requirements laid down in Annex II of the same Directive;
 - m) “digest”: sequence of binary symbols (bit) having predefined length, generated by applying a suitable hash function to the first sequence;
 - n) “hash function”: mathematical function generating, starting from a generic binary symbols sequence, a digest such that it is practically infeasible, starting from this, to identify a binary symbols (bit) sequence that generate it, as well as it is practically infeasible identify a pair or of binary symbols (bit) for which the function generates equal digests;

- o) “electronic evidence”: binary symbols (bit) sequence that can be processed by an electronic procedure;
 - p) “time reference”: information, containing date and time, associated to one or more electronic documents; the association procedure must meet the security procedures defined and documented, depending on the type of documents to be stored up, by the public or private subject that wants or is required to implement the digital storage, or by the responsible for storage appointed by the same subject;
 - q) “time stamp token”: electronic evidence that allows a time reference to withstand in court;
 - r) “storage procedure”: procedure implemented through manners as of articles 3 and 4 of the AIPA deliberation No 42/2001;
2. For the purposes of the present decree, it is also meant as:
- a) “static non modifiable document”: electronic document drafted a such a way that its content is not modifiable during the access and storage phases, as well as immutable in the time; to this purpose the electronic document shall not have macro instructions or executable code, capable to activate functions that can modify acts, deeds or data represented in the same document.
 - b) “electronic subscription”: issuance of a qualified electronic signature.

Art. 2.

Issuance, storage and exhibition

1. To the fiscal purposes, except what is laid down in paragraph (2), issuance, storage and exhibition of documents, as electronic documents, as well as analogic documents digital storage are carried out in compliance of stipulations laid down in decree by the President of the Republic 28 December 2000, No 445, of the decree by the President of the Council of Ministers 8 February 1999, of the AIPA deliberation 13 December 2001, No 42, and in agreement with what is laid down in the present decree.
2. The present decree does not apply to writings and documents relevant to fiscal instructions regarding customs and excise duties relevant to the Customs Agency.

Art. 3.

Obligations to meet for electronic documents for the purposes of the fiscal orders.

1. Fiscally relevant electronic documents:
 - a) have the form of non modifiable static documents;
 - b) are issued, with the purpose of ensuring their date attestation, authenticity and integrity, with the addition of a time reference and of an electronic subscription;
 - c) are exhibited in agreement with dispositions of art. 6;
 - d) are stored on any media the readability of which is ensured in the time, provided that their chronological order is assured and there is no solution of continuity for each tax period; furthermore, search and extraction functions must be provided for the information from the electronic archives based on surname, name, denomination, fiscal code, VAT registration number, date or logical association of them.
2. The electronic documents storage process is implemented with the modalities modality specified in paragraph (1), letter d), and with the procedure laid down at art. 3 of the AIPA deliberation No 42 of 2001 and is finalised by applying an electronic subscription and by issuing a time stamp token,

instead of the time reference, on the whole of the above documents or else on an electronic evidence holding the digest or the digests of the documents, or documents sets, by the responsible for the storage as of art. 5 of the deliberation AIPA No 42 of 2001. The storage process is enacted at least fortnightly for invoices and yearly for the other document types.

3. The electronic documents reproduction, on suitable media, is enacted following the modality as of art. 1, letters o) and p) of the deliberation AIPA No 42 of 2001.

Art. 4.

Digital storage of accounting writings and of fiscally relevant analogical documents

1. The digital storage process of fiscally relevant analogical documents and writings is done via storage of the relative image, as of modality at art. 3, paragraphs 1 and 2.

2. The storage process as of paragraph 1 can be restricted to one or more analogic documents and writings types, provided that the recordings chronological order is ensured and there is no solution of continuity for each tax period.

3. The original analogic documents storage process is enacted in agreement with the ways as of paragraph 1 and is finalised with the issuance of the time reference and of the electronic subscription by a public officer to attest the conformity of what is stored to the original document.

4. The destruction of analogic documents for which storage is mandatory is allowed only upon the digital storage procedure completion.

Art. 5.

Communication to the tax Agencies of the digest relative to fiscally relevant electronic documents

1. Within the month subsequent to the expiration of terms determined with the decree by the President of the Republic No 322 of 1998, regarding the filing of declarations regarding income taxes, regional taxes on production, and VAT, the involved subject or the responsible for storage, where appointed, in order to extend the electronic documents validity, forwards to the competent fiscal Authorities the digest of the storage relevant electronic archive, the relative electronic subscription and the time stamp token.

2. The fiscal Agencies specify through an administrative measure which other data and identification elements are to be communicated along with those specified at the preceding paragraph.

3. These Agencies make available through telematic means receipt of the carried out communication and their relative reference number.

Art. 6.

Exhibition of fiscal relevant writings and documents

1. The document as of art. 3 is made legible and, upon request, available on paper and electronic media where the writings are storage, in case of verifications, controls and inspections.

2. The stored document can also be exhibited through telematic means in agreement with modality defined through administrative measures by the competent fiscal Agencies Directors.

Art. 7.

Fulfilment of the stamp duty on electronic documents

1. The stamp duty on electronic documents is paid with the ways as of the legislative decree 9 July 1997, No 237. The concerned subject communicates to the competent Income Office the presumptive number of acts, documents and registers that could be issued or used during the year, as well as the amount and the reference data of the tax payment that took place.

2. Within January of the subsequent year the concerned subject communicates to the competent income Office the specification of the number of electronic documents, distinguished by type, formed in the preceding year and the reference data of the paid possible tax difference, done as in paragraph 1, or else the request of reimbursement or compensation. The overall paid amount, resulting from the communication, is assumed as provisional basis for the payoff of the current year tax.

3. The tax on books and registers as of art. 16 of the tariff attached to the decree by the President of the Republic 26 October 1972, No 642, held on optical media or any other media suitable to ensure the stored data unchangeability, is due every 2500 recordings or fractions and is paid in the ways specified in paragraph 1.

The present decree shall be published on the Official Journal of the Italian Republic.

Rome, 23 January 2004

The Minister: Tremonti