



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

ICC series on information compliance and governance

Applying ICC's information compliance principles to current EU and global debates on e-invoicing

ICC has been involved in policy and practice issues regarding electronic business since the 1970s. As the purveyor of many of international trade's best known self-regulatory rule-sets, and an organization speaking on behalf of companies of all sizes and sectors in more than 130 countries worldwide, ICC has a keen interest in the emerging space of information compliance and governance. The rate at which companies, governments and citizens adopt the use of digitized information puts pressure on governments to change the ways in which they regulate in areas of law whose enforcement relies on the auditability of certain business records. Electronic invoicing is an early manifestation of this tension, and ICC believes that taking stock of the operation of Directive 115/20011, as one of the first regulatory responses to this pressure on a supra-national level, is critical to ensure that both businesses and governments can apply lessons learned.¹

Due to the 31 December 2008 deadline laid down in Directive 2001/115 for a European Commission report on technological evolution concerning e-invoicing, many groups have already or are in the process of articulating comments and views on this matter from a European business perspective. ICC would like, by means of this brief paper, to share some key points from a more international and strategic policy perspective.

Companies doing business in or with countries that levy value-added and/or goods-and-services taxes (VAT) are very familiar with the complex requirements defined by such laws. Indeed, the concept and consequences of VAT as a "self-assessment tax" are well known to most companies that trade internationally. Generally, modern VAT laws include rules about the legal obligation to issue an invoice and the minimum content thereof, but such laws have stopped short of imposing hard requirements as to the form and technical creation, transmission and storage of invoices. By contrast, obligations in these areas of ELECTRONIC invoicing practice have become a common feature of requirements for the recognition of electronic invoices as originals for VAT purposes. This is also understandable – at least at this moment: after all, issues of authenticity, integrity and more generally security, also continue to present challenges in areas of business-to-business communications of less interest to tax authorities – but governments should recognize that such rules add to a body of tax law for companies to comply with that is arguably already among the most complex, dynamic, and diverse.

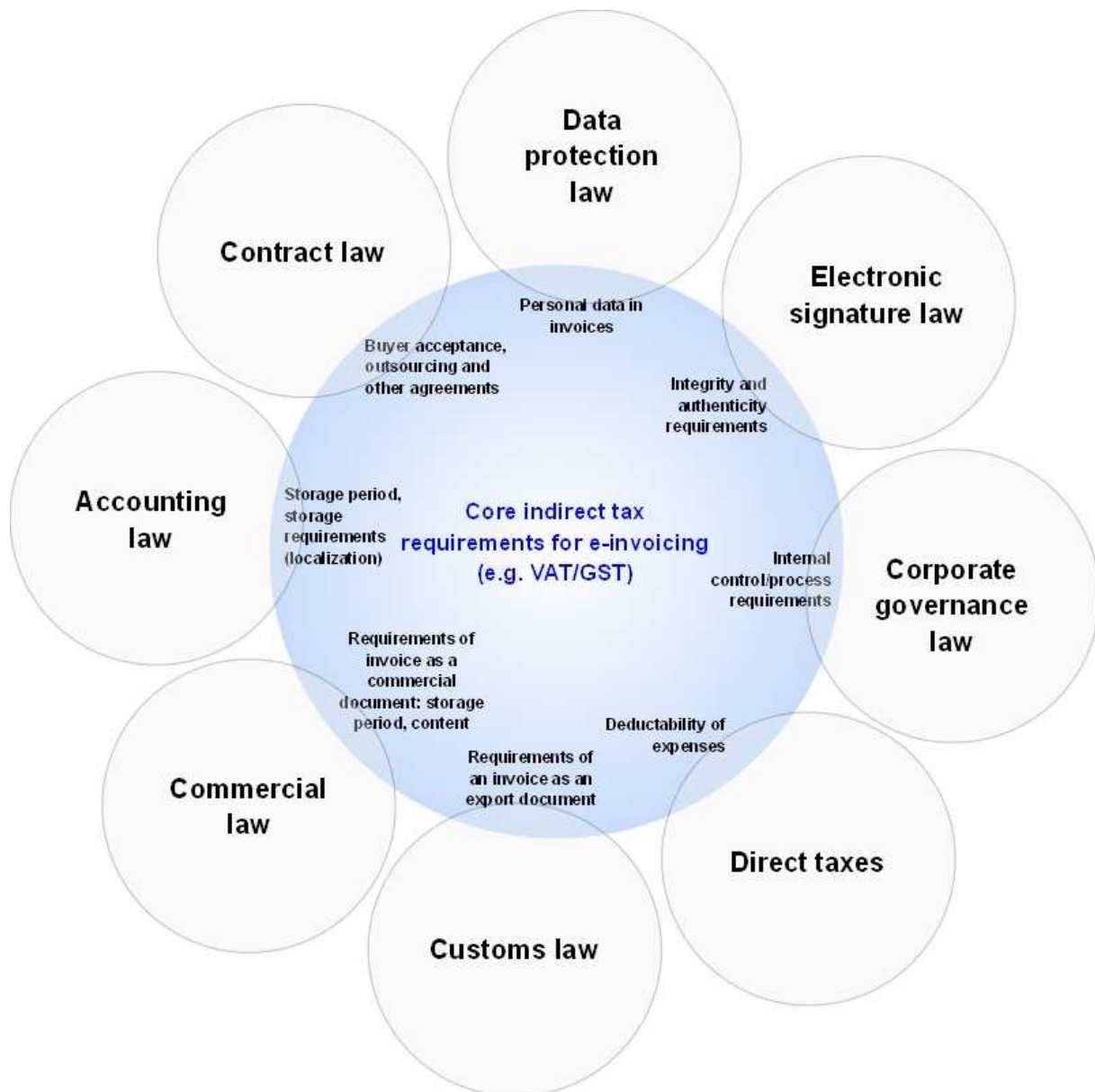
¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:015:0024:0028:EN:PDF>



Department of Policy and Business Practices

The rules established for electronic invoicing through Directive 2001/115 in the European Union are today often taken as a basis or inspiration by other countries with similar tax regimes. For example, countries such as Mexico, Chile, Brazil, South Africa, Singapore, Slovenia and Turkey are either introducing rules for the compliant exchange of e-invoices or have already done so. While major differences exist among these regimes, they generally require companies to deploy one of a limited number of security mechanisms to guarantee integrity and authenticity of original electronic invoices over their entire life cycle (from issue by or on behalf of the supplier, to receipt by or on behalf of the buyer, until the end of the mandatory storage period for each of these parties). The objective behind such rules is evidently to ensure that tax authorities have a reasonably predictable and sure way of establishing that invoices are real and have not been tampered with. However, the imposition of a limited number of technological and/or process measures by definition means that companies are constrained in their ability to deploy the mix of measures that they would otherwise take to protect their business information. In relation to the kinds of issues that arise – and policy recommendations to be taken into account – in the context of such information compliance requirements, we refer to the ICC position paper, issued in 2006, which can be viewed at: http://www.iccwbo.org/uploadedFiles/ICC/policy/e-business/Statements/373-472_information_compliance.pdf.

Suffice it to say here that e-invoicing, where explicitly enabled by legislation, is a very good example of an information compliance area that is insufficiently coordinated with other horizontal and sectoral regulations that also contain requirements on the creation, exchange or storage of invoices. The figure below shows just some of the other areas of legislation, in addition to VAT or Goods and Services Taxes that a company must take into account to ensure compliance of e-invoicing processes:



One lesson learned from the past four years of experience with EU Directive 2001/115 concerns the concept of technology neutrality. ICC has always been a strong advocate of technology-neutral law and law enforcement with respect to user choice – in other words, when information compliance requirements are objectively needed for public policy reasons, the law should not discriminate between available technologies and processes that are capable of producing equivalent results. ICC supports technology neutral solutions for companies based on global standards such as UN-CEFACT (cross sector industry invoice).



Department of Policy and Business Practices

However, technology neutrality must never be an excuse for not providing sufficient implementation guidance to companies seeking to conform to legal requirements. It is accepted good practice for the law to be unspecific as to the specific means to be deployed by businesses to obtain the objective sought, but it is imperative for law enforcement to give businesses concrete information as to how to interpret the law in an IT systems and process design, and operational context. Therefore, tax authorities should be obligated to publish implementation-relevant information describing the technology and process choices that they will consider compliant, without discriminating among available options that are capable of producing equivalent results. Businesses should ideally be able to enforce such implementation-level guidance in a court of law; such enforceability would greatly diminish the uncertainty that currently surrounds e-invoicing compliance. The lack of meaningful guidance from tax administrations has been by far the most influential factor behind the conservative investment attitude adopted as regards e-invoicing by companies since entry into force of Directive 2001/115.

Importantly, therefore, ICC stresses that it would be naïve for governments and tax authorities to believe that the e-invoicing adoption rate would improve only as a result of making the law more technology neutral: unless coupled with detailed and enforceable guidance based on a “functional equivalence” approach (whereby the market, not governments or service providers, is trusted to determine which types of solutions are the most beneficial for businesses), making the EU Invoicing Directive less technology-specific would increase rather than decrease regulatory uncertainty. This responsibility to provide concrete information to businesses seeking to implement electronic business processes is relatively new to law enforcement organizations. Nevertheless, it is the responsibility of such organizations to increase their level of technical and business process competence, and on that basis engage in a concrete dialogue with the business community, if they want to encourage the use of e-invoicing practices while at the same time ascertain a high level of long-term auditability.

In relation to the level of auditability (and in particular integrity and authenticity safeguards) that tax administrations may require, ICC believes that e-invoicing laws, to be successful in their objectives of achieving a productive balance among the legitimate interests of tax administrations, businesses and society, should achieve a reasonable distribution of cost and risk between the private sector and tax administrations. While previously, in the paper-based world, tax authorities carried much of the burden of establishing whether invoices were real and unchanged, it is obvious that some countries have taken the opportunity, with the introduction of e-invoicing legislation, to shift more of that burden and associated costs to the private sector by imposing the use of nationally-specific security technologies based on easily recognizable local accreditation mechanisms.



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While ICC believes it is reasonable that (at least until such time as tax administrations worldwide become more skilled in the evaluation of IT systems and processes) governments can legitimately require businesses to apply security measures that present certain audit advantages, ICC emphasizes that the public/private sector division of cost in relation to such processes should be no different between paper invoicing and electronic invoicing.

Regardless of the specific changes that Europe might make to further refine its legislative framework around e-invoicing, it must be recognized that the global situation concerning electronic invoicing will for the foreseeable future remain characterized by extreme fragmentation of highly complex legal requirements among countries. Intergovernmental cooperation can lower such barriers and eliminate some unnecessary obstacles, however ICC strongly believes that intensified cooperation with the private sector (for example through the collaborative definition of international model agreements and good practice guidelines) is more likely to produce balanced and sustainable results within reasonable time-frames. There are many examples of such collaborative private/public sector approaches providing a way forward in areas of significant tension between public policy and business objectives; to mention a few:

- ICC has been one of the leading forces behind the development of the UN-CID Rules, which, even decades ago, became the undisputed basis for the vast majority of successful model EDI agreements worldwide (including the model agreement incorporated in European Commission Recommendation 1994/820/EC);
- More recently, ICC has successfully led the development of model clauses for the protection of personal data in trans-border data flows.

ICC calls on governments and tax administrations to consider the brief observations contained in this paper. Our members, representing companies of all sizes worldwide and from all sectors, would be pleased to work with the public sector in the development of appropriate approaches for the facilitation and effective auditability of electronic invoicing as a cornerstone of seamless global e-business.

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ICC Commission on E-Business, IT and Telecoms (EBITT)

Business leaders and experts drawn from the ICC membership establish the key business positions, policies and practices on e-business, information technologies and telecommunications through the EBITT Commission. With members who are users and providers of information technology and electronic services from both developed and developing countries, ICC provides the ideal platform to develop global voluntary rules and best practices for these areas. Dedicated to the expansion of cross-border trade, ICC champions liberalization of telecoms and development of infrastructures that support global online trade. ICC has also led and coordinated the input of business around the world to the World Summit on the Information Society, Geneva 2003, Tunis 2005, and continues this effort in the activities established in the Tunis Agenda, through its initiative, Business Action to Support the Information Society (BASIS).

For more information please visit:

<http://www.iccwbo.org/BASIS>
<http://www.iccwbo.org/policy/ebitt/>

About ICC

The International Chamber of Commerce is the largest, most representative business organization in the world. Its tens of thousands of members companies in over 130 countries have interests spanning every sector of private enterprise.

A world network of national committees keeps the ICC International Secretariat in Paris informed about national and regional business priorities. More than 2000 experts drawn from ICC's member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

The United Nations, the World Trade Organization, and many other intergovernmental bodies, both international and regional, are kept in touch with the views of international business through ICC.

For more information please visit: www.iccwbo.org

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