



ICMS IN THE DIGITAL AGE AND BASIC CONCEPTS

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I - INTRODUCTION

The ICMS (acronym for “Tax on Operations Relating to the Circulation of Goods and Provision of Interstate and Intermunicipal Transport and Communication Services”) is possibly the most complex Brazilian tax.

Being a state tax, there are specific regulations in each of the 27 units of the federation in Brazil, in addition to an extensive network of bilateral or multilateral agreements between the States and the Federal District aiming at specific rules for interstate operations.

This article, however, focuses on the digital tools used by the State Finance Departments and the need for companies to adapt to this modern and complex inspection environment.

Approximately 14 years ago, the Federal Government, together with the States, entered the Digital Era creating the SPED environment and the state electronic environments, and have been adapting themselves through the creation of virtual tools. Taxpayers in general, however, have not kept up with the speed with which this adaptation is being incorporated into inspection procedures.

II – ELECTRONIC “NOTA FISCAL” INVOICE

Before proceeding with the explanations, it is necessary to talk a little about the electronic “nota fiscal” invoice.

The “nota fiscal” invoice is the able document to be used in commercial and industrial operations with regards to the circulation of goods. We highlight the term “circulation” to emphasize that the nota fiscal must not be issued only for billing events, but also serves as a tax support for any logistical operation such as, for example, shipping and return for storage, consignment, rental or shipment to use in a service provision.

Mere commercial invoices, although they may be considered valid among private parties, have no fiscal validity.

With digitalization and the SPED project, the paper nota fiscal was abolished and the electronic nota fiscal (NF-e) was created, the essence of which is an XML file generated in a layout specified in the SPED manuals (<http://www.nfe.fazenda.gov.br/portal/listaConteudo.aspx?tipoConteudo=33ol5hhSYZk>). The NF-e has an auxiliary document called DANFE (Electronic Invoice Auxiliary Document), a document in “PDF” where the data of the operation are shown in a layout similar to an invoice. However, this only serves to support the transit of goods, and the document is not able to be presented in tax inspections, for example.

When issuing an XML file, after the authorization it goes straight to the database of the State Revenue of the States where the operation originated and where it is destined to. This online communication results in tax authorities becoming immediate aware of the operation, items in transit, the taxation or use of the tax benefit.

An important point, often ignored by taxpayers, is that any NF-e after received or rejected by the recipient must go through the procedure called Receiver's Manifestation. This procedure is an accessory obligation where the recipient, through the SPED environment page or SEFAZ (the State Revenue) portals, informs the Tax Authorities whether or not they have received a specific tax document, indicating one of the following options:

- Awareness of emission
- Confirmation of the operation
- Record of operation not performed
- Unawareness of the operation

III – SPED AND STATE ELECTRONIC ENVIRONMENTS

SPED, short for “Public Digital Bookkeeping System” (<http://sped.rfb.gov.br/>), is an integrated initiative of the federal, state and municipal tax administrations aiming to digitize the tax administration's relations with taxpayers and provide greater exchange of information, control and mutual transparency of information.

In this portal it is possible to access the main accessory obligations that must be fulfilled by taxpayers in general, access manuals, version update files and corresponding legislation regarding obligation, procedures, deadlines, layouts, penalties of tax documents and accessory obligations.

Based on SPED, but focused on the administration of ICMS, the States and the Federal District created their electronic environments. As an example, the São Paulo Department of Finance created the Electronic Fiscal Post, and the Rio de Janeiro one created Fisco Fácil and DEC.

Today, through these tools, SEFAZ inform taxpayers of pending issues, send clarification notifications and may provide subpoenas and, in the future, assessments, authorize or prevent the issuing of letters of good standing.

What can be signaled / warned through these sites:

- Result of cross-referencing XML files with SPED FISCAL file, indicating underpaid or unpaid ICMS;
- Point out unrecorded invoice which is considered omission of SPED FISCAL data;
- Point statement not transmitted (Example: Fiscal SPED, DECLAN/RJ, NOVAGIA/SP, DUB/RJ, DIEF/ES).

1. Monthly accessory obligation to be delivered by each facility of a company, detailing the movement of incoming and outgoing transactions of any nature.

2. All of the aforementioned are monthly or annual ancillary obligations where information on the ICMS calculation is transcribed in accordance with the CFOP (operating tax codes), respective movements of entry and exit and calculation of the tax.

What can we consult through these sites?

- Notifications for regularization of pointed pending issues;
- Summons regarding tax audits;
- Tax assessment notices;
- Notices for changes in corporate information.

IV – RECOMMENDATIONS

As can be seen throughout the present, the analysis of tax information by the authorities takes place in real time, independently of the information provided by the taxpayer. To avoid tax exposures arising from differences in tax information, it is necessary to:

- Send all documents related to the purchases you make to your Accountant's Tax area. Do not wait for the payment to send it, the bookkeeping must occur in the date the document is issued, except in interstate transactions where there is a tolerance of up to 5 days;
- Request the XML file from your suppliers regarding the purchases you make; DANFE in PDF, despite offering better visualization of the operation to users, is not valid before tax authorities.
- Keep all the XML you receive from your suppliers for 5 years;
- The same procedure must be adopted for CT-e paid (electronic transportation bills)



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