

Italy: 2020 Quick Fixes - Italian implementation

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On 30 November 2021, the Italian Government published Legislative Decree no. 192/2021 (the 'Decree') in the Official Gazette. This Decree implements the provisions introduced by Council Directive (EU) 2018/1910 (referred to as the '2020 Quick Fixes').

By doing so, Italy avoids being referred to the Court of Justice of the European Union for failing to transpose the Quick Fixes rules (which should have been implemented by 31 December 2019), after being reminded to do so by the European Commission in a reasoned opinion on 22 September 2021.

The new 'proof of delivery' rules introduced by Council Implementing Regulation (EU) 2018/1912 were already applicable, without the need for implementing legislation.

The Decree entered into force on 1 December 2021.

A mandatory check of the customer's VAT identification number and Intrastat declarations - article 41(2-ter) of Law Decree no. 331/1993.

The Decree introduces the following additional substantive conditions for the exemption regime in connection with intra-EU supplies of goods in Italy:

- the customer must be identified for VAT purposes in a Member State other than Italy and must have indicated his VAT identification number to the supplier;
- the supplier must have submitted an Intrastat declaration or must be able to duly justify the omitted or incorrect submission of the declaration.

Call-off stock arrangements - article 38-ter and article 41-bis of Law Decree no. 331/1993

By inserting article 38-ter and article 41-bis in Law Decree no. 331/1993, the Decree implements the provisions on call-off stock arrangements, for goods moved into Italy and goods dispatched from Italy, respectively.

Italian VAT law already provides for a call-off stock simplification and the Italian Revenue Agency has issued various ministerial guidelines in the past, to clarify how to practically apply this simplification. The new 'Quick Fixes' are much more detailed and, in some way, different from the 'old' Italian scheme; existing Italian call-off stock arrangements should be carefully reviewed to ensure their compliance with the new requirements.

With respect to **goods moved into Italy** under call-off stock arrangements, the Decree provides that the transfer by a taxable person of goods forming part of his business from another Member State to Italy does not trigger a deemed intra-EU acquisition if the following conditions are met:

- a) the goods are dispatched or transported within Italy by the taxable person, or by a third party acting on his behalf, to be supplied there, at a later stage and after their arrival, to another taxable person who has the right to acquire them in accordance with a pre-existing agreement between the two taxable persons;
- b) the taxable person who dispatches or transports the goods has neither established his business nor has a fixed establishment in Italy;
- c) the taxable person to whom the supply is made is identified for VAT purposes in Italy and his identity and the identification number allocated by Italy are known to the taxable person referred to in point (b) at the time when the dispatch or transport starts.

Where the above conditions are met, an intra-EU acquisition of goods will be deemed to be made by the taxable person to whom the goods are supplied in Italy, provided that the transfer occurs within 12 months of the arrival of the goods in Italy.

With respect to **goods moved outside Italy** under call-off stock arrangements, the Decree provides that the transfer by a taxable person of goods forming part of his business from Italy to another Member State, qualify as an intra-EU supply of goods (according to article 41(1)(a) of Law Decree no. 331/1993) if the following conditions are met:

- a) the goods are dispatched or transported to the Member State other than Italy by the taxable person, or by a third party acting on his behalf, to be supplied there, at a later stage and after their arrival, to another taxable person who has the right to acquire them in accordance with a pre-existing agreement between the two taxable persons;

- b) the taxable person who dispatches or transports the goods has neither established his business nor has a fixed establishment in the Member State where the goods are dispatched;
- c) the taxable person to whom the supply is made is identified for VAT purposes in the Member State where the goods are dispatched and his identity and the VAT identification number allocated by such Member State are known by the taxable person dispatching or transporting the goods at the time when the dispatch or transport starts;
- d) the taxable person dispatching or transporting the goods (i) records the transfer of the goods in a specific ledger and (ii) includes the identity of the taxable person acquiring the goods and the VAT identification number assigned to him by the Member State to which the goods are dispatched or transported in the Intrastat declaration.

The intra-EU supply of goods will be deemed to be made if the transfer of the right to dispose of the goods as owner occurs within 12 months of the arrival of the goods in the Member State to which they were dispatched or transported and, at that moment, the conditions laid down above are met. Such supplies of goods will be deemed to be made at the time of the transfer of the right to dispose of the goods as owner to the taxable person referred.

VAT treatment of chain transactions - article 41-ter of Law Decree no. 331/1993

By inserting article 41-ter in Law Decree no. 331/1993, the Decree implements the provisions on chain transactions, for goods dispatched or transported from/to Italy.

In particular, the Decree introduces the following definitions of 'chain transactions' and of 'intermediary operator':

- 'chain transactions' mean goods supplied successively which are dispatched or transported from one Member State to another Member State directly from the first supplier to the last customer in the chain.
- 'intermediary operator' means a supplier within the chain other than the first supplier in the chain who dispatches or transports the goods either himself or through a third party acting on his behalf.

Given the above, the Decree provides for the following VAT treatment of goods transported from or dispatched to Italy within a chain transaction:

- In chain transactions where the **goods are dispatched or transported from Italy** by the intermediary operator, the zero-rated intra-EU supply will be the supply made to the intermediary operator. However, where the intermediary operator communicates his Italian VAT identification number to the supplier, the zero-rated intra-EU supply will be the supply of goods carried out by the intermediary operator. The supply following the intra-EU one is not deemed to be carried out in Italy.
- In chain transactions where the **goods are dispatched or transported to Italy** by the intermediary operator, the intra-EU acquisition is the acquisition made by the intermediary operator. However, where the intermediary operator communicates to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported, the intra-EU acquisition will be the one carried out by the customer of the intermediary operator. The supplies carried out by the person making the intra-EU acquisition and the subsequent ones are deemed to be carried out in Italy.

According to the Decree, the aforementioned provisions do not apply to distance sales, facilitated via electronic interfaces by taxable persons that are deemed to have received and supplied the goods themselves (according to article 2-bis of Presidential Decree no. 633/72).

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