



Italy: Clarifications on the reporting of distance sales by marketplace operators

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On 1 June 2020, one year after the introduction of reporting obligations for distance sales, the Italian tax authorities issued Circular no. 13/E to clarify the requirements (please refer to our Tax Alert of 21 August 2019 for a complete overview of the rules). In these guidelines the Italian tax authorities, after recapping the main definitions and characteristics of the reporting system, have taken a very strict (and unexpected) approach to the liability of marketplace operators, as detailed below.

Reporting obligations

If a marketplace operator fails to transmit the information regarding distance sales within the deadline, or transmits incorrect or incomplete information, that person is deemed to have received or supplied the goods itself and is liable to pay VAT on those supplies for which it has failed to send (or has sent incomplete) information, unless it can prove that:

- i. the VAT has been paid by the supplier; or
- ii. in the case of incomplete or incorrect information, it did not and could not reasonably have known that this information was incomplete or incorrect.

In order to prove point i), the marketplace operator should present appropriate documentation (e.g. copies of the F24 payment forms, wire transfer receipts, VAT returns) proving that the merchants correctly accounted for and paid VAT on the sales made through the marketplace.

In order to prove point ii), the marketplace operator should implement an internal due diligence system, to collect and review all the information required for reporting purposes. If the marketplace operator discovers through its due diligence review that certain details were incorrect or incomplete, it can rectify and complete them by filing a corrective report by the end of the month after that when the initial report was due. In this case it will pay negligible reduced penalties.

If, however, a taxpayer does not submit its initial report by the proper deadline (i.e. by the end of the month after the relevant quarter), no corrective report can be filed by the second month after the relevant quarter and the taxpayer will be liable for the Italian VAT on the sales for which it has failed to send information, unless it can prove that the VAT has been paid by the supplier.

The Circular also clarifies that, whether or not the sales are over the reporting thresholds, the reporting obligations apply to both incoming and outgoing distance sales in Italy - i.e. whether an EU merchant sells to an Italian final customer or an Italian merchant sells to an EU final customer. This is meant as a simplification for marketplaces, which are not in a position to know whether or not merchants (selling over different platforms/portals) are breaching the threshold for distance sales.

Postponement of EU Directive 2017/2455

To take account of the difficulties that businesses and Member States are facing at the moment due to the COVID outbreak, the EU Commission has recently put forward a proposal to postpone the entry into force of EU Directive 2017/2455, which brings into effect the new article 14(a) of the VAT Directive. The Commission has proposed postponing the application of the VAT e-commerce package by six months; therefore, these rules might apply as of 1 July 2021 instead of 1 January 2021.

If the rules are postponed, the Italian reporting obligations for distance sales may remain in force (pending confirmation from the Italian government) until the new effective date for the EU rules, i.e. until 30 June 2021.

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