



Italy: New rulings on the VAT exemption for financial services

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Recent guidelines from the Italian tax authorities on the scope of the VAT exemption for financial services

On 17 September 2020 the Italian tax authorities (ITA) published two rulings clarifying the scope of the VAT exemption for financial services. In Ruling no. 372 the ITA confirmed that the exemption applies to advisory services provided in combination with trade-transmission services, as together they constitute an exempt negotiation service under article 135(1)(f) of the Principal VAT Directive. In Ruling no. 375, the ITA confirmed the features that back-office services provided to a bank must have in order to qualify for the VAT exemption for financial services under article 135(1)(c) and (d) of that same directive.

The ruling on advisory services

The applicant, an Italian broker, asked whether advisory services provided together with a trade-order receipt and transmission service could be considered as a single exempt supply consisting in a 'negotiation in securities', pursuant to article 135(1)(f) of the Principal VAT Directive, transposed into Italian VAT law as article 10(4) and (9) of the Italian VAT Decree. The broker would receive the orders from the client and transmit them to further intermediaries, which would then execute the orders. The broker would not take ownership, even in a spot capacity, of the underlying securities and would receive a commission for each trade booked through it. The trade transmission service would also be purchasable separately as a stand-alone service.

The ITA responded by referring to the relevant case law of the CJEU, especially in relation to whether the combined offering would constitute a single economic operation and in relation to the operation's economic goals. The ITA concluded that this integrated service, including both advice on securities and trade receipt and transmission services for the securities, should be considered a single supply consisting in transactions in securities, exempt under article 135(1)(f) of the Principal VAT Directive. The service has all the characteristics of a negotiation in securities, as it consists in an act of mediation between the investor/client and the financial institutions holding the securities, which are contacted by the broker for the execution of the trades.

The ruling on back-office services

The applicant, an Italian company providing back-office and support services to banking institutions, asked whether outsourced services – the management and processing of cheques, management of current account payments, and management of payments in relation to trading portfolios and utilities – could be exempt from VAT under article 135(1)(c) and (d) of the Principal VAT Directive as they are transactions in current accounts, payments and money transfers.

The ITA ruled that, for the exemption to apply, those services must as a whole constitute a distinct operation, with the specific and essential characteristics of a payment service (namely, the transfer of funds and the modification of the legal and economic status of the customer). Furthermore, the provider must assume a legal obligation to execute those services and be liable to its clients for damages if it fails to produce the expected legal and economic effects. In the case considered by the ITA, the transfer of funds and the change in the legal and economic position of the customer was managed and initiated by the applicant, which was also contractually responsible towards the bank for any damage to final clients due to incorrect or incomplete payments; therefore its services could fall within the exemption.

Significance of the cases

Both cases are very reliant on the specific circumstances of the applicant; however, they provide welcome clarification on the scope of the VAT exemption in complex areas where multiple services are provided and should be considered carefully by other taxpayers that have a similar business structure or are considering whether to set up a new one.

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