



Italy: Quick Fixes - proof of delivery clarified by the Italian Tax Authority

Tax & Legal Alert

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On 12 May 2020, the Italian Tax Authority ('ITA') published Circular 12/E containing clarifications on the new proof of delivery requirements introduced by the VAT Quick Fixes rules.

Italy has not yet implemented the VAT Quick Fixes rules; however, the new proof of delivery rules introduced by Council Implementing Regulation (EU) 2018/1912, amending Implementing Regulation (EU) No 282/2011, have been applicable since 1 January 2020, without the need for implementing legislation. The new article 45a of Regulation (EU) No 282/2011 ('Article 45a') provides that the transport of the goods is presumed to have taken place if certain conditions are fulfilled, depending on whether the transport is arranged by the supplier or the recipient of the goods (the 'presumption').

The Circular clarifies the application of the new Article 45a, also on the basis of the Explanatory Notes published by the EU VAT Committee in December 2019 in relation to the new Quick Fixes rules.

The clarifications on the new Article 45a

In cases where the transport is arranged by the recipient of the goods, the recipient must deliver a declaration to the supplier, confirming that the goods have arrived at their destination. This declaration must be provided by the tenth day of the month following that in which the transaction takes place; however, as also explained in the Explanatory Notes, if the declaration is provided late the presumption is still valid.

The Circular also confirms that the presumption does not apply when the goods have been transported directly by the supplier or the recipient of the goods, without the intervention of a third party. This is because the proof of transport must be provided by two parties, each independent of both the supplier and the recipient. Some suggestions about independent parties are included in the Explanatory Notes; they exclude, for example, the head office/branch scenario and situations where one company controls another.

The new proof of delivery can be disregarded by the ITA if it has reason to believe that the transport has not taken place. The Circular cites as examples cases where:

- the ITA discovers that the goods are still stored in a depot of the supplier;
- the ITA discovers that an accident has occurred during transport, resulting in the destruction of the goods;
- the documentation listed in Article 45a as proof of delivery contains incorrect information or is forged.

The new presumption can also apply to acquisitions taking place before 1 January 2020, if the taxpayer has the documentation listed in Article 45a.

The new Article 45a presumption and national rules

In those cases where the transport cannot be proven under the new presumption rules, the ITA can revert to the existing national rules, as laid down in various resolutions and rulings, to assess whether the transport has effectively taken place. The existing Italian guidelines should be applied on a case-by-case basis. It will still be up to the taxpayer to prove, to the satisfaction of the tax authorities, that the conditions for the exemption (transport included) are met. In other words, where the presumption does not apply, the situation will stay the same as it was before the new Article 45a came into force. The taxpayer is free to choose between the new Article 45a and the previous national rules (cherry-picking approach).

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