



Italy: Implementing Decree no. 660061/2019 regarding the reporting obligation for distance sale

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On 31 July 2019, the Italian Tax Authorities issued the Implementing Decree No. 660061/2019 (herein after 'the Implementing Decree'), regarding the reporting obligations for distance sales mentioned in our previous [Tax Alert of 2 May 2019](#).

Such obligation refers to all taxable persons, resident or not in Italy, who facilitate - through the use of electronic interfaces such as marketplaces, platforms, portals or similar tools - distance sales into the Community or distance sales of imported goods.

According to Par. 1 of the Implementing Decree (recalling the definitions provided in the proposal of the European Commission dated 11 December 2018 for an amending EU Implementing Regulation no. 282/2011), the term 'facilitate' means the use of an electronic interface to allow a customer and a supplier, selling goods through the electronic interface, to enter into contact which results in a supply of goods through that electronic interface to that customer.

The above provision includes cases where the electronic interface participates, either directly or indirectly:

- a) to the determination of the general terms under which the supply of goods is made;
- b) to collecting the payment made from the customer;
- c) to the order or delivery of the goods.

On the contrary, the marketplace is not considered to facilitate sales when the same only provides any of the following:

- a) the processing of payments in relation to the supply of goods;
- b) the listing or advertising of goods;
- c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

The Implementing Decree confirms that, ordinarily, such reporting obligation is due on a quarterly basis within the end of the month following the quarter in which the sales took place (i.e. the last reporting obligation - referred to Q4 2020 - will expire on 31 January 2021). Indeed, as from 2021, the 'new' article no. 14a of the VAT Directive, as amended by Council Directive 2017/2455, should be implemented in Italy to replace the current reporting obligations.

The first deadline of the reporting obligation for distance sales is **next 31 October 2019** and refers to:

- distance sales of any type of goods, irrespective of their unit value, carried out in Q2 and Q3 of 2019;
- distance sales of electronic goods (i.e. mobile phones, video games consoles, tablet PCs and laptops) as well as distance sales of imported electronic goods not exceeding EUR 150 carried out in the period from 13 February 2019 to 30 April 2019.

The information which must to be mandatorily transmitted by the marketplaces is the following:

- a) the name (or the personal data), residence (or domicile) and e-mail address of **each supplier** as well as the identification number used by the supplier on the marketplace and his fiscal code (if any);
- b) the total number of items sold in Italy during the relevant quarter;
- c) the total sales price or, alternatively, their average sale price, expressed in EUR for items sold in Italy

The transmission can be performed directly by the marketplaces (using *Entratel* or *Fisconline* channels, after obtaining credentials from Italian Tax Authorities) or, in alternative, by an appointed intermediary (e.g. KPMG).

In order to fulfil the new reporting obligation, a non resident taxable person in Italy (without a fixed establishment) **must register for Italian VAT purposes** either through the direct VAT registration or through the appointment of a fiscal representative.

If the taxable person fails to transmit the aforementioned information within the deadline or transmits incorrect or incomplete data, said person is deemed to have received and supplied the goods himself and is liable to pay VAT on these supplies for which it has failed to send (or has sent incomplete) information, unless it proves that:

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

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