CIRCULAR N. / E

Taxpayers Division

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OBJECT: Description ...

SUBJECT: Terms and methods of transmitting sales data a distance of goods that occur through the use of an electronic interface - article 13, paragraph 1, of the decree-law of April 30th 2019, n. 34, converted with modifications by the law 28 June 2019, n. 58

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1 Premise

The rapid development of e-commerce has resulted in the course over the years, the emergence of new business models based on the sale of products or services *online* or on the dematerialized offer of services brokerage. In this context, the role of the so-called "digital platforms" it has become particularly relevant, so much so that many states are forced to take on initiatives aimed at ensuring the correct application of tax regulations.
In this latter aspect, the fact that the platforms operate on a scale transnational, without a physical presence in the reference market makes the theme taxation and related obligations very complex.

In our system article 13 of the "Growth Decree 2019" [1] (of following Growth Decree) addressed the issue, introducing an obligation to communication for taxable persons, residents and non-residents, who manage the electronic interfaces through which distance sales are facilitated imported goods or distance sales of goods within the European Union between suppliers and buyers.

This is a transitional provision which will cease to be effective on 31 December 2020 [2], in view of the entry into force, from 1 January 2021, of the article 14- *BIS* of Directive 2006/112 / EC (hereinafter also "VAT Directive") [3].

In particular, article 14- *BIS,* paragraph 1, of the VAT Directive provides that " *If a taxable person facilitates, through the use of an electronic interface such as a virtual marketplace, a platform, a portal or media similar, the distance selling of goods imported from third territories or third countries with shipments of intrinsic value not exceeding EUR 150, it is considered that the same taxable person in question has received and disposed of those goods ".* The paragraph 2 of the provision in question extends this provision to « *disposals of goods made in the Community by a taxable person not established in the Community to a person who is not a taxable person ".*

1 Law decree 30 April 2019, n. 34, converted amendments by law no. 58.
2 Deadline set by article 13, paragraph 5, of the Growth Decree.
3 Remember that article 14- *BIS* was introduced in the VAT Directive by Directive 2017/2455 / UE.

There *ratio* of the norm lies in the opportunity to involve the platforms in the collection of VAT on sales *online* given that « *Great part of the distance selling of goods supplied from one Member State to another and from third territories or third countries to the Community, is facilitated through the use of an electronic interface such as a virtual marketplace, one platform, a portal or similar means, often with the use of deposit systems logistics "(cf.* recital 7 of Directive no. 2455).

Similarly, the *ratio* of article 13 of the Growth Decree, which places a the obligations of information are borne by the platforms, which is to allow the emergence and monitoring of the VAT turnover of distance sales EU and Extra-EU, which the platforms themselves help to facilitate, by placing a borne by the latter certain charges. In particular, as can be seen from the Explanatory report to the Growth Decree, « *the rationale of the rule is to favor VAT compliance on distance sales of goods made through electronic platforms ".*

With the provision of the Director of the Revenue Agency of 31 July 2019, prot. n. 660061 bearing « *Terms and methods of data transmission relating to distance sales of goods that occur through the use of a electronic interface referred to in article 13, paragraph 1, of decree-law 30 April 2019, n. 34, converted with amendments by law 28 June 2019, n. 58 (Published in the Official Journal of 29.06.2019) "(* hereinafter also the "Measure") [4] the methods and terms with which the subjects they use have been identified electronic interfaces to facilitate distance sales between suppliers and buyers communicate the commercial data of the suppliers to the Revenue Agency.

This circular therefore provides clarifications regarding the provisions mentioned, also in light of the provisions of the Measure.

[4] Issued in implementation of article 13, paragraph 1, of the Growth Decree.

1. The new provisions

Paragraph 1 of the aforementioned article 13 states that « *the taxable person who facilitates, through the use of an electronic interface such as a virtual market, one platform, a portal or similar means, distance sales of imported goods or distance selling of goods within the European Union is required to transmit within the month following each quarter, in a manner established by provision of the director of the Revenue Agency, for each supplier the following data:*

a) the name or the complete personal data, the residence or the domicile, the tax identification code where existing, the mailing address electronics;

b) the total number of units sold in Italy;

c) at the choice of the taxable person, for the units sold in Italy the amount total sales prices or the average sales price ».

Failure or incomplete sending of the aforementioned data determines that the subject passive is considered to be liable for the VAT applied to distance sales, except proving that the tax was paid by the supplier.

Paragraph 3 of the standard in question states that « *The taxable person of referred to in paragraph 1 is considered a tax payer for distance selling for which has not transmitted, or has incompletely transmitted, the data referred to in paragraph 1, present on the platform, if it does not prove that the tax was acquitted by the supplier* ». The provision introduces a presumption relating to burden of the entity that manages the platforms, consisting of being considered liable for the VAT payable by suppliers on distance sales of goods from third territories or from member states of the European Union.

The presumption in comment operates when the platform operator does not transmit, or incompletely transmit, the data of the aforementioned operations.

In order to overcome the aforementioned relative presumption, the manager will have to demonstrate that the supplier actually paid the tax.

The decree in comment (see article 13, paragraph 4) also affects the discipline introduced by the "Simplification Decree" [5] relating to obligations weighing on electronic platforms that facilitate distance sales of cell phones, *consul* playing, *tablet, PC* is *laptop,* as well as imports of the same assets if they have an intrinsic value not exceeding 150 euros.

On the one hand, in fact, the aforementioned article 13 provides that the presumption of direct transfer that the Simplification Decree places on the platforms that facilitate the operations mentioned above purchases effective only from the 1st January 2021. This date, as already anticipated, corresponds to the one in which it will enter Article 14- in force *BIS,* paragraph 1 of the VAT Directive.

On the other hand, it is established that the platforms that facilitated the transactions mentioned above in the period between 13 February 2019 (date of entry into force of the conversion law of the Simplification Decree) and 30 April 2019 (date of entry into force of the Growth Decree) must send the data relating to said transactions according to terms and conditions established with the provision provided for in paragraph 1 of the same article 13 (the "Measure" mentioned in the Introduction).

In this regard, it should be noted that for the transmission of data relating to operations referred to in article 11- *BIS* of the Simplifications Decree the Measure has identified the same procedures as for the object data of the Growth Decree (see point 2 of the Provision). Also, the terms for the transmission of the same coincide with those identified for the first transmission of data subject to the Growth Decree (31 October 2019: see point 3.4 of the Provision).

[5] See article 11-bis, paragraphs 11 to 15 of the decree-law of 14 December 2018, n. 135, converted, with modifications, by law 11 February 2019, n. 12 (Simplification Decree).

2 definitions

By implementing the content of article 13 of the Growth Decree, the Order of the Director of the Revenue Agency of 31 July 2019 it provides, among other things, the definitions of " *supplier* "," *electronic interface* " " *eases* "," *distance selling of goods* "," *taxable persons* "(See paragraph 1 of the Measure).

In particular for " *distance selling* "Means the supply of goods shipped or transported directly or indirectly by the supplier from one Member State of the European Union other than that of arrival of the shipment or transport to the purchaser (intra-community distance sales of goods) and the supply of goods shipped or transported directly or indirectly from supplier from third territories or third countries to the purchaser's destination (distance selling of goods imported from third territories or third countries).

The notion *de qua* follows that of distance selling for VAT purposes from article 14, paragraph 4, of the VAT Directive [6].

For " *supplier"* means the natural person or entity, resident or otherwise resident in the territory of the State, which, acting in the exercise of businesses or in the exercise of arts and professions, he makes distance sales.

In light of the analogy of the notion of supplier with the definition of distance selling established by the VAT Directive, must be considered excluded from the notion of " *supplier"* The subjects who carry out distance selling outside the exercise of business activity or the exercise of arts or professions, of which to article 4 of Presidential Decree 26 October 1972, no. 633.

Therefore, it does not matter for VAT purposes, due to a lack of the condition subjective, a distance sale made by a person who does not act in the carrying out one's economic and professional activity. It follows, ad example, that the natural person who occasionally sells goods through digital platforms is not considered supplier for the purpose of

[6] Introduced by Article 2 (1) of Directive 2455 of December 5, 2017, with effect from January 1, 2021.

communication introduced by article 13 of the Growth Decree and by the regulations implementation established by the Provision.

The Provision defines " *electronic interface* ", Used for facilitate distance selling, virtual markets (*marketplace),* platforms digital, portals or similar means, resident or non resident in the territory of the State.

For *marketplace* it must be understood as the real or virtual space in which they have place activity of buying and selling goods and services between a plurality of buyers and sellers. Also the concept of *marketplace* was borrowed from article 14- *BIS* of the VAT Directive [7].

The term " *eases* ", According to the Provision, designates the use of an electronic interface that allows a buyer and supplier to sell goods through the electronic interface, to establish a contact that gives rise to a transfer of goods to this buyer through said electronic interface.

In this context, the cases in which the electronic interface is included participate directly or indirectly in one or more of the following transactions (first list):

the. the determination of the general conditions under which it is the sale of goods;

ii. the collection from the buyer of the payment made;

iii. when ordering or delivering goods.

As regards the ordering and delivery of goods, please note that it does not occur when the platform simply manages the aforementioned activities without intervening, albeit indirectly, in their formulation or, alternatively, upon delivery of the purchased goods.

On the contrary, the notion of " *to ease* "Does not include operations following (second list):

1. the processing of payments in relation to the supply of goods;

2. cataloging or advertising of goods;

[7] Introduced by article 2, paragraph 2, of Directive 2017/2455 / EU, with effect from 1 January 2021

3. redirection or transfer of buyers to others

electronic interfaces where goods are offered for sale, without further interventions in the sale.

As an example, it is not considered part of the concept of " *to ease* "

a distance selling, for the purposes that are relevant here, a platform that:

- offers digital payment and money transfer services through Internet;
- it merely increases the visibility on the net of a product of a brand or to improve its *ranking* in search engines;
- provides customers with a service consisting in the mere comparison of market prices for an asset.

For completeness, it should be noted that the definition of the term "facilitates" it also includes the hypotheses in which the digital platform carries out one or more operations in the first list simultaneously with one or more operations in the second list.

The definition of the term "facilitates", and the relative casuistry, are inspired by content of article 5- *ter* of Implementing Regulation (EU) no. 282 of 15 March 2011 [8] as regards the supply of goods or the provision of services facilitated by electronic interfaces and special schemes for taxable persons who provide services to people who are not taxable persons, make sales to distance of goods and certain domestic supplies of goods.

The Provision establishes that "taxable persons" means i subjects, residents and non-residents in the territory of the State, who facilitate the distance sales of imported goods or distance sales of goods inside of the European Union, through the use of an electronic interface. It's about a very broad definition, for which reference should be made to the paragraph following.

The identification of such subjects, as anticipated in the premise, is functional to consider the taxable person liable for sales tax a

[8] Introduced by Article 1 of Implementing Regulation (EU) no. 2026 of November 21, 2019.

distance, territorially relevant in Italy, for which it has not transmitted, or has incompletely transmitted the data present on the platform, if not shows that the tax has been paid by the supplier (article 13, paragraphs 1, 3 of the Growth Decree).

As already specified, a presumption has been introduced concerning the subject that manages the platforms that can be overcome by providing proof that the supplier has paid VAT on sales.

3 Application area

With regard to the subjective application field, the Legislator does reference to the broad *genus* of passive subjects, distinguishing between passive subjects established and not established.

The established taxable persons obliged to communicate the data of referred to in Article 13 of the Growth Decree are to be identified in taxable persons VAT, including those which, by joining or applying special schemes, are not debtors tax.

By way of example, they are generally excluded from the scope of the discipline in question those who access the flat-rate regime, referred to in law of 28 December 2015, n. 208 and subsequent modifications. In particular, the latter, while falling within the notion of VAT taxable person, do not they charge VAT in compensation, nor do they exercise the right to deduct tax acquitted, due or charged on national, community and purchases imports (see circular April 10, 2019, n. 9 / E). Therefore, generally i subjects falling under the regime in question are not required to communication of the data, referred to in article 13 of the Growth Decree, except in the assumptions in which they make purchases in *reverse charge* and are therefore debtors tax.

On the contrary, those who fall under the notion of taxable person have access to VAT regimes which provide for special mechanisms that affect the determination of the tax base or on the exercise of the deduction.

By way of example, the entities that apply the regime are included special for agriculture (see article 34 of Presidential Decree 633 of 1972), publishing (see art. 74, first paragraph, letter c), of the aforementioned decree), the margin (see Law Decree No. 41 of 23 February 1995, converted with Law No. 85 of March 22, 1985 and subsequent amendments).

Instead, the phrase *"Taxable persons not established in the territory of the State "* includes both platform managers who do not sell territorially relevant goods or services in the State, that the managers (not established) who carry out the aforementioned operations.

For the latter (non-established subjects who carry out operations territorially relevant), if without permanent establishment, in order to fulfill the notification obligation pursuant to article 13 paragraph 1 of the Growth Decree direct identification is required, pursuant to article 35- *ter* of Presidential Decree 633 of 1972, or the appointment of a tax representative pursuant to of article 17, third paragraph, of Presidential Decree 633 of 1972.

On the other hand, for non-established taxable persons who do not carry out transactions territorially relevant in the territory of the State, the request is sufficient to the Revenue Agency of a tax code. It goes without saying that in the hypothesis in which the non-resident person is in the condition of having to pay the tax for account of the supplier, will be obliged to request the opening of the VAT number for to be able to pay the tribute.

As for the objective area, the obligation to communicate concerns two types of data:

1) the data relating to the sales of any object of distance selling, referred to in article 13, paragraph 1, of the Decree Growth;
2) data relating to the disposal of mobile phones, game consoles, *Tablet* PC is *laptop* indicated in article 11- *BIS,* paragraphs 11 to 15 of the law decree December 14, 2018, n. 135, converted with law 11 February 2019, n. 12.

As part of the distance selling of goods within the Union European sales of goods for Italy or Italy, respectively regulated by articles 40, paragraphs 3 and 4, lett. b), and 41, paragraph 1, lett. b), DL n. 331 from 1993.

In light of the need to ensure prompt fulfillment of obligations of communication of the platforms, it is believed that they can communicate i sales data, regardless of the threshold value provided by the State of destination of the good. The single platform, in fact, knows the data relating to sales that it facilitates, but may not be aware of the data overall referable to the operator and inclusive of sales facilitated by others platforms or carried out without the "facilitator" intervention of a platform e.

Therefore, the platforms will also be able to communicate sales data relating to the so-called "over threshold" transactions.

Paragraph 3 of article 13 of the Growth Decree provides that the manager of the digital platform is considered liable for the VAT relating to the transactions facilitated by the same for the failure or incomplete transmission of the data provided from paragraph 1.

Both failure, how incomplete the transmission of data must be verified with reference to each supplier who uses the platform.

In this regard, the incomplete transmission of the data concerns the non indication of some of the elements provided for in paragraph 1, which must, however, all be transmitted so that the platform does not fall under the obligation to pay the VAT payable by suppliers for distance sales made by them.

In this case, the obligation to pay VAT by the platform exists only where the latter does not demonstrate *"That the tax was acquitted by the supplier"*.

The Financial Administration will still be able to log in to the obligated subject in order to detect the correctness of the data communicated.

For evidentiary purposes, it is believed that the supplier can show any suitable documentation certifying the payment of the VAT due (model F24, bank documents, tax returns, etc.).

The absence of the aforementioned documentation determines the obligation to VAT payment by the platform relating to sales a facilitated distance.

The data subject to the transmission obligation referred to in points 1) and 2) are only those actually present on the platform and communicated digitally by supplier in relation to distance sales facilitated by the platform. There circumstance is inferred from paragraph 3 of article 13 of the Growth Decree, in which it is established that the taxable person referred to in paragraph 1 is considered a debtor tax for distance selling for which it has not transmitted, or has transmitted incompletely, the data referred to in paragraph 1, *"Present on the platform".*

This implies the existence of an adequate internal system of *due diligence* aimed at data quality control and risk prevention. Indeed, the Provision establishes that « *In case of failure to transmit data i taxable persons are not considered to be tax payers if they demonstrate that the tax was paid by the supplier. In the case, however, of data transmission incomplete, the aforementioned subjects are not considered tax payers if show that they have taken all the necessary measures for correct detection and identification of data present on the digital platform "(* cfr. point 3.5 of the Measure).

4 Data transmission

The provision (point 3.4) establishes that taxable persons transmit to the Revenue Agency, by the end of the month following each quarter, a starting from the quarter of entry into force of art. 13 of the Growth Decree, i following data relating to each supplier who made at least one sale in reference quarter:

to) the name or complete personal data, including residence or domicile, as well as the unique identifier used to carry out the

sales facilitated by the electronic interface, the tax identification code

where existing [9] the email address;

b) the total number of units sold in Italy;

c) at the choice of the taxable person, for the units sold in Italy the amount

total sales prices or the average sales price, expressed in Euros.

Provided that, as specified above, the data to be transmitted are only those existing on the platforms and that this implies the existence of an adequate one internal system of *due diligence* aimed at checking data quality e risk prevention, where the platform ascertains that the data communicated does not are correct or are incomplete, the same platform, in order not to to be considered liable for VAT, will have to make the appropriate changes to incorrect or incomplete data communications.

In this regard, the aforementioned Provision provides that « *In case of omissions or errors in data transmission, taxable persons can transmit one new communication which fully replaces the previous one sent. The new communication is made by the end of the month following the one in which the first communication was sent and must contain indication of the reference quarter "(* cfr. point 3.7).

In the latter case, the platform may send communications substitutes for the previous one.

If the platform has not communicated, pursuant to article 13, paragraph 1, of the Growth Decree, the data it possesses within the deadline provided for in point 3.4 of the Measure (by the end of the month following each quarter), will not be able to send a replacement communication by term established by point 3.7 of the aforementioned Provision. In that case, the Substitute communication does not produce effects for compliance purposes of the reporting obligation and the platform is considered a tax payer, pursuant to article 13, paragraph 3, of the Growth Decree.

[9] The platform will be able to provide both the Italian tax code and the seller's foreign identification. In both cases, as expressly provided for in article 13, paragraph 1, this data must be communicated to the Agency only where the supplier has, in turn, communicated it to the platform.

The sales prices must be expressed in Euros and the interfaces electronic devices are entitled to convert foreign currencies into euros according to their internal systems; therefore the conversion will also be accepted according to the exchange rate of the transaction date or the end of the month, as long as carried out by each platform according to a constant, explicit criterion in the documentation prepared by the same.

In order to protect the needs of simplicity in fulfilling the obligations of operators, the data to be communicated for each sale can be represented by the transaction price as displayed by the user at time of purchase through the platform that facilitates the transaction, including any ancillary services (such as shipping or transport), even if the latter are carried out by third parties; in other words, it goes communicated the total of the transaction concluded through the platform, gross VAT.

The so-called "complex" sales, such as the sales of packages of several goods a against a unit price, they are considered one-off transactions.

On the contrary, those relating to are considered separate sales accessories (headphones, case etc.) relating to other goods, such as, for example *Tablet* is mobile phones.

In the case of returns that the platform is aware of, they will have to be subject to substitute communication. The deadlines for submitting the latter run from the moment the platform is aware of the made.

In case of failure to send the replacement communication, the platform is considered to be liable for the VAT due on the supplies of the goods facilitated pursuant to article 13, paragraph 3, of the Growth Decree, except that the payment of the tax by the supplier is proved.

Vice versa, the platform will not be considered to be liable for VAT if the data communications are correct, since the same company is not aware of the value of the rendered.

The same principles are applicable to cases where, after the conclusion of the transaction *online,* the payment is not successful (and therefore the sale is not perfect).

Finally, they must not be communicated, pursuant to article 13 of the Decree Growth, data relating to the sale of goods made free of charge and to the free samples, as they do not constitute supplies for VAT purposes (see article 2, paragraph 3, lett. d) of Presidential Decree no. 633 of 1972).

5 Effective date of the reporting obligation

Data transmission is carried out by the end of the month following each quarter, starting from the one coming into force of article 13 in comment. During the first application of the legislation, it was envisaged that the first transmission of data, as well as the transmission of data relating to operations governed by article 11- *BIS* of the Simplifications Decree, occurred by 31 October 2019 (point 3.4 of the Provision).

However, in the event that, due to technical and operational problems inherent to the transmission or readability of the data, it was necessary to replace o integrate the original communications in order to correctly include the data mentioned above, is deemed not applicable, until the date of issue of this letter circular, the provision referred to in Article 13, paragraph 3, of the Growth Decree, the objective conditions of uncertainty in this regard may be deemed to exist the application of the legislation in question, pursuant to art. 10, paragraph 3, law n. 212 of 2000 (so-called Statute of taxpayer rights).

* * *

The regional directorates will ensure that the instructions provided and the principles are followed stated in this circular are promptly observed by the Provincial Departments and Employee Offices.

THE DIRECTOR OF THE AGENCY
Ernesto Maria Ruffini
(digitally signed)