

RESOLUTION N. 44 / E



Taxpayers Division

Rome, 28 July 2020

OBJECT: Applicability of art. 35-ter, paragraph 5, Presidential Decree 633/72 to subjects established in Norway.

With the request for legal advice specified in the object, it was exposed the following question

QUESTION

The Instant Office asks if the agreement signed on 1st August 2018 between the European Union and the Kingdom of Norway concerning cooperation administrative, the fight against fraud and debt collection value added tax, complete the requirements required by paragraph 5 of the article 35- *ter* of Presidential Decree 633 of 1972. In other words, the Office intends to know whether i subjects not resident in Italy, but established in Norway, can avail themselves the direct identification required by the aforementioned article in order to fulfill the tax obligations in our country.

INTERPRETATIVE SOLUTION PROPOSED

According to the Instant Office, the agreement signed between Norway and the Union Commission follows the content of the instruments currently in force internally of the European Union aimed at guaranteeing assistance on value tax added and debt collection.

This agreement, in fact, from the point of view of the modalities through which implements administrative cooperation, the powers and obligations recognized in the contracting parties and the tools that guarantee compliance, it is entirely similar to the provisions of the regulations currently in force regarding assistance between European Union tax authorities.

The Office therefore considers that this agreement meets the underlying needs to the standard and allow subjects established in Norway to make use of the institute direct identification in order to fulfill obligations and exercise rights in VAT matters without the need to appoint a tax representative pursuant of articles 204 ss. of Directive 2006/112 / EC (article 17, paragraph 2, of Presidential Decree 633/1972).

OPINION OF THE REVENUE AGENCY

Article 35- *ter* of Presidential Decree 633 of 26 October 1972 (hereinafter the "VAT decree"), entitled " *VAT identification and accounting obligations of non-resident subject*" And issued in implementation of Article 2 (2), letter b) of the VI Directive (as modified by Directive 2000/65 / EC), regulates the direct identification in the territory of the State by the subjects non-residents who sell goods and provide services in Italy subject to tax.

According to the aforementioned Directive, each member country must allow direct identification to operators established in another belonging State to the European Union to fulfill VAT obligations in the event of transactions carried out in the territory of that state.

Therefore, as an alternative to the appointment of a tax representative, the subjects non-residents who carry out transactions relevant for VAT purposes in the territory of the State have the right to identify themselves directly in the manner indicated in the cited article 35- *ter* of Presidential Decree 633/72.

In particular, paragraph 5 of the aforementioned article 35- *ter* provides that " *can make use of the direct identification provided by this article, the subjects do not*

residents, who carry out business, art or profession activities in another State member of the European Community or in a third country with which they exist legal instruments governing mutual assistance on indirect taxation, similarly to the provisions of the directives of the
Tip n. 76/308 / EEC of March 15, 1976 and n. 77/799 / EEC of December 19th 1977 and by Regulation (EEC) no. 218/92 of the Council of 27 January 1992".

Differently from what is foreseen in case of subjects established in one Member State, for which the possibility of identifying directly for VAT purposes in other Member States are automatically assigned, for subjects resident in countries third parties this option is subject to verification of the existence of agreements administrative cooperation similar to those in force in the EU (see Resolution 5 December 2003, n. 220 / E).

As already highlighted, on August 1, 2018, the Kingdom of Norway has an agreement has been signed with the European Union to ensure correct determination and collection of value added tax, the correct one VAT credit recovery and the fight against fraud. This agreement has "*the goal to pose the framework for administrative cooperation between Member States is in place Union and Norway to allow the authorities in charge the application of VAT legislation, to provide mutual assistance to ensure compliance with this legislation and protect VAT revenues*"(See article 1).

In this regard, we agree with the instant Office that this agreement is completely analogous to what is foreseen by the regulations currently in force for assistance between EU tax authorities on VAT and, therefore, comply with the requirements set by the aforementioned article 35- *ter*, paragraph 5 of the decree VAT.

In conclusion, it is believed that the agreement in question allows subjects established in Norway to make use of the direct identification institution for the purpose of fulfill obligations and exercise VAT rights in Italy, in

alternative to the appointment of a tax representative pursuant to Article 17,
paragraph 2 of the VAT decree.

The regional directorates will ensure that the principles enunciated and
instructions provided with this resolution are promptly observed
by the Provincial Departments and the dependent Offices.

THE HEAD OF DIVISION

(digitally signed)