

Answer n. 416

OBJECT: Interpello article 11, paragraph 1, lett. a), law no. 212 -
Sales Delivery - indirect electronic commerce - storage and telematic transmission of
payments

With the request for ruling specified in the subject, the following has been exposed

QUESTION

[ALPHA], hereinafter, points out what is summarized below.

The applicant intends to start a "Sales Delivery" service, structured as follows:

*"the customer, through an app or website owned by third parties, containing the commercial offer of the
Company's products, will order the goods to be purchased, indicating in addition to his personal data also the place
of delivery;*

the contract between the Company and the customer will be concluded directly through the app or website;

the payment will be made through the procedure provided by the app or website;

*the goods produced by the Company will be collected, by riders appointed by the third party managers
of the app or website, at the new premises (laboratories) not open to*

public, and delivered directly to the customer's home with delivery service ".

The applicant, while deeming the aforementioned activity qualifiable as "indirect electronic commerce", consequently exempted from the obligations of electronic storage and telematic transmission of the fees, intends to fulfill these obligations spontaneously and, to this end, asks to know if:

"- the Company has the right to electronically store and electronically transmit also the daily fees relating to Delivery Sales; e

- the Company has the right to fulfill the obligation to store and electronically transmit these payments by installing, in each room not open to the public dedicated to Sales Delivery, of an independent Consolidation Server - Telematic Recorder (Server-RT) connected at the only cash point (or in any case a number of less than 3) present in said room ".

INTERPRETATIVE SOLUTION PROSPECTED BY THE TAXPAYER

In summary, the applicant believes:

- "to have the right to electronically store and electronically transmit also the daily fees relating to Sales Delivery, pursuant to article 1, paragraph 3 of the Ministerial Decree 10.5.2019 according to which 'The subjects who carry out the operations referred to in paragraph 1 may in any case choose to electronically store and electronically transmit the data of the daily fees for these operations' and in consideration of the fact that it already proceeds with the electronic storage and telematic transmission of the daily payments relating to the catering activity with administration in restaurants / points of sale ";

- "to be able to fulfill the obligation of memorization and telematic transmission of such payments through the installation of an autonomous and dedicated Consolidation Server - Telematic Register (Server-RT) connected to the single cash point

(or in any case a number less than 3) present in each room not open to the public where the foods subject to Sales Delivery will be produced and prepared ".

Following the request for additional documentation, the applicant also specified that:

- "the Company intends to install an autonomous and dedicated Server-RT in each laboratory" not open to the public "to which it will connect the only cash point present there or a number of cash points present therein less than three";

- "the Company does not have any premises / points of sale" open to the public "with a number of checkout points less than three per single point of sale. All the Company's points of sale" open to the public "are in fact equipped with an equal number of cash points or more than three per single point of sale, and each of them is equipped with an independent Server-RT dedicated to the single point of sale to which the respective cash points are connected ".

OPINION OF THE REVENUE AGENCY

As clarified several times by the documents of practice (see for all the resolution of 5 November 2009, no. 274 / E) "indirect electronic commerce" is a sale of tangible goods in which " *the commercial transaction takes place electronically but the customer receives the physical delivery of the goods at home according to traditional channels, i.e. via carrier or forwarder (see resolution 21 July 2008, n.312 / E, resolution 15 November 2004, n.133 /IS)", while " For VAT purposes, indirect electronic commerce operations are similar to mail order sales and, therefore, are not subject to the obligation to issue an invoice (if not requested by the customer no later than the time of execution of the operation), as required by 22 of Presidential Decree 633 of 1972, nor to the obligation to certify by issuing the receipt or receipt pursuant to article 2, letter oo), of Presidential Decree 21 December 1996, n. 696. The sales consideration must, however,*

be recorded in the register provided for by article 24 of Presidential Decree 633 of 1972 ".

Article 2, paragraph 1, of the legislative decree 5 August 2015, n. 127, introduced the new obligation of telematic certification of fees, replacing the traditional methods of certification by means of a receipt or receipt, establishing that " *From 1 January 2020, the subjects who carry out the operations referred to in Article 22 of the Decree of the President of the Republic October 26 1972, n. 633, electronically store and electronically transmit the data relating to daily payments to the Revenue Agency. The electronic storage and related transmission of the payment data replace the registration obligations referred to in article 24, first paragraph, of the aforementioned decree no. 633 of 1972. ... By decree of the Minister of Economy and Finance, specific exemptions from the obligations referred to in this paragraph may be provided for, based on the type of activity exercised ".*

By decree of the Minister of Economy and Finance of 10 May 2019 published in the Official Gazette no. 115 of 18 May 2019 - in article 1, paragraph 1, the cases of exemption referred to in the aforementioned article 2, paragraph 1 have been identified, including, in letter a), the "... *transactions not subject to the obligation to certify the fees, pursuant to article 2 of the decree of the President of the Republic of 21 December 1996, n. 696, and subsequent amendments and additions, and the decrees of the Ministry of Economy and Finance of 13 February 2015 and 27 October 2015 ".*

Having said this, as clarified with the answer to question no. 198, published on 19 June 2019 in the a ppo sitasezi on edelsitodellascrivent and (www.agenziaentrate.gov.it/portale/web/guest/normativa-e-prassi/risposte-agliinterpelli/interpelli), " *However, the provisions regarding the electronic submission of payments do not affect the general rules on VAT and the clarifications already provided in the past (see resolution 274 / E of 5 November 2009), according to which if the sale set up as indirect electronic commerce - as the transaction*

commercial takes place online - the same is comparable to mail order sales to which the provisions of article 2, letter oo), of the decree of the President of the Republic of 21 December 1996, n. 696, which exempts the operation from any certification obligation, except for the obligation to issue an invoice if requested by the customer ".

Consequently, the aforementioned response to ruling no. 198 of 2019, *"the fees deriving from electronic commerce continue to be exempted from the obligation to send the fees electronically while they must be recorded in the register provided for by article 24 of Presidential Decree 633 of 1973, without prejudice to the establishment, together with the same, of the one referred to in previous article 23 for any invoices issued ".*

Having said that, as described in the application, the sales operation ("Sales Delivery") that the applicant intends to carry out can be configured as "indirect electronic commerce", provided that the ordering, payment of the goods to be purchased and, therefore, stipulation of the sales contract, they are entirely managed electronically through *app* or site *Internet*, while the relative physical delivery of the goods takes place using traditional methods.

This results in the exemption from the obligation of certification, including telematic, of the "Sales Delivery" fees, without prejudice to the right to fulfill them based on the article 1, paragraph 3 of the aforementioned decree of the Minister of Economy and Finance of 10 May 2019, which establishes *" The subjects who carry out the operations referred to in paragraph 1 (or, the so-called "cases of exemption") in any case, they can choose to electronically store and electronically transmit the data of the daily fees for these operations ".*

As regards the procedures for storing and electronically transmitting the daily fees, the Technical Specifications attached to the provision of the Director of the Revenue Agency of 26 October 2016, prot. n. 182017 (Version 8.0 - June 28, 2019), in paragraph 3, provide that *" For merchants operating with a*

no less than three cash points for each point of sale ..., the storage and telematic transmission of the data of the daily payments of the individual cash points can be carried out through a single "collection point" ... consisting of a connected Telematic Register to the individual cash points ... defined "Consolidation Server-Telematic Register" (hereinafter, only Server-RT). The RT Server - necessarily allocated at the single point of sale - always represents the first point where the payments are collected and constitutes the tool that seals the files and sends them to the AE system ".

In this regard, the provision according to which the use of the *Server- RT* it is only possible when operating with a number of not less than three checkout points per single point of sale, it refers to the hypothesis of the point of sale "open to the public".

In the case presented, however, the petitioner clarified that:

- with regard to the "Sales Delivery" service " *the goods produced by the Company will be picked up ... from the new premises (laboratories) not open to the public, and delivered directly to the customer's home with delivery service "*;

- *"intends to install an autonomous and dedicated Server-RT in each laboratory" not open to the public "to which it will connect the only cash point present there or a number of cash points present therein less than three";*

- while " *All of the Company's "open to the public" points of sale are in fact equipped with a number of cash points equal to or greater than three per single point of sale, and each of them is equipped with an independent Server-RT dedicated to the single point of sale to which respective cash points "*

Given that the goods aimed at "Sales Delivery" are all produced in premises (laboratories) not open to the public (so-called shops *online* or virtual), the limitation illustrated in paragraph 3 of the aforementioned Technical Specifications does not apply and, consequently, the applicant has the right to fulfill the obligations of storage and telematic transmission of the fees by installing an autonomous and dedicated Server-RT in each laboratory "not open to the public "to which to connect even the single point

cash desk present therein or in any case a number of cash points less than three.

THE HEAD OF DIVISION

(digitally signed)