

Answer n. 141

OBJECT: Transfers of intra-community goods, proof of transport or shipment
of the asset: Article 45-bis of the EU Implementing Regulation no. 282/2011

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

QUESTION

ALFA (the "Company" or the "Instant"), develops advanced technological solutions (...). As part of its business, the Company carries out intra-union sales of goods to customers established in other member countries of the European Union using different modes of transport of the goods and making use of different carriers.

The transport of the goods in question can be carried out by the company itself or by its own intra-Union customer, or by third parties on their behalf; therefore, these transfers can be either "ex works" or "free at destination".

Currently, for the purposes of keeping regular accounts, the Applicant keeps all the accounting and extra-accounting documentation necessary to demonstrate the intra-EU nature of the sales made, correctly issuing the invoices, proceeding with their registration in the VAT registers and regularly submitting the Intrastat lists. .

In particular, in the event that the transport is carried out by the Instant Company, or by a third party on its behalf, to prove the actual movement of the goods from Italy to

another Member State, the same has implemented - in compliance with the guidelines of the Revenue Agency on this point - a procedure aimed at collecting and storing the following tax and accounting documentation:

- the sales invoice issued to the Union customer;
- the summary lists relating to the intra-union sales carried out;
- the buyer's bank remittance relating to the payment of the goods;
- copy of the contract or order / confirmation of sale or purchase relating to the commitments undertaken with the customer or agreements made by correspondence with indication of the destination of the goods;

- the invoice of the carrier in charge with evidence of the deliveries made and documentation certifying payment of said invoice;

- DDT issued by the Company with indication of the destination of the goods, normally signed by the carrier for taking charge of the goods;

- a "CMR" transport document signed by the carrier for taking charge of the goods and by the recipient for receipt.

Where, on the other hand, the transport is handled by the Union transferee, or by a third party on its behalf, the Company, in order to prove the actual movement of the goods from Italy to another Member State, has implemented a procedure aimed at collecting and storing the following tax and accounting documentation:

- the sales invoice issued to the Union customer;
- the summary lists relating to the intra-union sales carried out;
- the buyer's bank remittance relating to the payment of the goods;
- copy of the contract or order / confirmation of sale or purchase relating to the commitments undertaken with the customer or agreements made by correspondence with indication of the destination of the goods;

- DDT issued by the Company with indication of the destination of the goods, normally signed by the carrier for taking charge of the goods;

- a "CMR" transport document signed by the carrier for taking charge of the goods and by the recipient for receipt.

Considering the difficulties in recovering the "CMR" also signed by the recipient of the goods for receipt, the Company has implemented a recovery and storage procedure - in accordance with the instructions provided by the Financial Administration with (among others) Resolution no. 19 / E of 2013 and with the response to ruling no. 100 of 2019 - a certificate from the customer confirming receipt of the goods in the other Member State.

This certificate, countersigned and stamped by the transferee, also bears:

- the identifier of the transferee,
- the transferee's VAT number,
- the sales invoice number,
- the date of the sales invoice,
- the amount of the sales invoice,
- indication of the weight of the material sold covered by the sales invoice,
- the following declaration by the customer "The undersigned confirms receipt and delivery of the goods relating to the aforementioned invoice";

- stamp and signature of the transferee.

Given the above, the Company asks to know:

- if the "set of documents" currently collected - in compliance with the indications provided by the tax authorities with (among others) resolution no. 19 / E of 2013 and with the response to ruling no. 100 of 2019 - can also be used starting from 1 January 2020 (entry into force of art. *B/S* of Regulation (EU) no. 282/2011) to prove that the intra-community transfers have been carried out;

- if said "set of documents" can continue to be recovered according to the indications provided by the aforementioned Resolution no. 19 / E of 2013, or "without

delay (...) as soon as commercial practice makes it possible ".

INTERPRETATIVE SOLUTION PROSPECTED BY THE TAXPAYER

The petitioner observes that recently, with the reply to question n. 100 of 2019, the case of a company that carries out intra-community transfers of goods both "free at destination" and "ex works" was examined.

In the aforementioned questioning, the petitioner pointed out that at the time of shipment of the goods he issued a transport document (DDT), indicating the destination of the goods, normally signed by the carrier for taking charge; when the transport was carried out by the company, the same received the invoice from the transporter indicating the transport carried out.

In addition to the DDT, the company prepared a document containing:

- the identifier of the customer (i.e. the transferee on the invoice);
 - the reference of the sales invoice;
 - the reference of the logistic invoice (internal document);
 - the date of the invoice;
 - ~~the~~ date of the delivery
 - the destination of the goods, the country of destination and the year of receipt of the goods;
- declaration by the Community transferee that "the goods relating to the above invoices are duly received at our subcontractor, our warehouse or at our stores ... in the month of ...".

This declaration, stamped, dated and signed by the transferee, was sent to the transferring company, which kept a copy in order to prove that it had been transported to another EU state.

In this regard, the Revenue Agency, confirming the validity of the indications

contained in the previous resolutions of 28 November 2007, n. 345 / E, 15 December 2008, n. 477 / E, as well as 25 March 2013, n. 19 / E, acknowledged that the documentation described may constitute proof of the transfer provided that:

1) the subjects involved (i.e. transferor, carrier and transferee) and all the data useful to define the operation to which they refer;

2) the relevant sales invoices and documentation are kept bank certifying the sums collected in relation to the previous sales, the documentation relating to the contractual commitments undertaken and the Intrastat lists.

The Agency has therefore again confirmed the validity of the "declaration of the transferee" as proof of the exit of the goods from the territory of the State provided that it is filled in with all the data useful to identify the subjects involved and the operation carried out and that, at the same time keep the sales invoice, Intrastat lists, bank documentation and that relating to contractual commitments.

At the same meeting, the Agency also highlighted that the interpretative address accepted therein is "compliant with the provisions of the Implementing Regulation of 4 December 2018, no. 2018/1912 / EU".

Ultimately, it was considered that the procedure implemented by the taxpayer for the collection and storage of a series of documents (including the declaration of the transferee confirming receipt of the goods), similar to those already mentioned in the previous practice rulings , including above all resolution no. 19 / E of 2013, was compliant with the new rules governed by EU Regulation no. 1912/2018.

Having said this, the applicant Company therefore believes that the documents normally recovered and stored up to now can prove the transport and, therefore, the receipt of the goods in another EU State other than Italy, even following entry into force of the EU Regulation in question, as compatible with

the same, as already expressly confirmed by the Revenue Agency in April 2019 with the response to ruling no. 100.

OPINION OF THE REVENUE AGENCY

With the EU Regulation 2018/1912 of 4 December 2018, applicable from 1 January 2020, article 45- *BIS* in the EU Implementing Regulation no. 282/2011 of 15 March 2011 "containing provisions for the application of Directive 2006/112 / EC relating to the common system of value added tax".

With this provision, the issue of the documentary burden relating to intra-community transfers of goods referred to in Article 138 of Directive 2006/112 / EC was addressed. In particular, with paragraph 1, letters a) and b), of article 45- *BIS* of the EU Implementing Regulation no. 282/2011, a relative presumption was introduced regarding the transport of goods within the Community. The Commission has provided some clarifications regarding this provision with the Explanatory Notes on "quick fixes 2020", published in December 2019. Paragraph 1, letter a), regulates the hypothesis in which the goods have been shipped or transported by seller or by a third party on its behalf and, in letter b), that in which the goods were transported by the buyer or by a third party on his behalf.

In the first case (referred to in letter a), the seller, in addition to declaring that the goods have been shipped or transported by him or by third parties on his behalf, must produce at least two documents, not contradictory and coming from different and independent subjects. by both the seller and the buyer.

These documents are indicated in paragraph 3, letter a) of article 45- *BIS*: these are documents relating to the transport or shipment of goods, for example a document or a CMR letter bearing the carrier's signature, a bill of lading, an air freight invoice, or an invoice issued by the forwarder.

Alternatively, the seller may submit, in addition to the declaration that the goods

a document referred to in the aforementioned paragraph 3, letter a) and any of the documents indicated in the following letter b) of the same paragraph 3 have been sent or transported by him or by third parties on his own account:

"(i) an insurance policy relating to the shipment or transport of the goods or bank documents certifying payment for the shipment or transport of the goods;

ii) official documents issued by a public authority, for example by a notary, who confirm the arrival of the goods in the Member State of destination;

iii) a receipt issued by a depositary in the Member State of destination confirming the deposit of the assets in that Member State ".

In the second case (referred to in letter b), in which the transport is carried out by the buyer or by a third party on his behalf, the buyer must provide the seller, by the tenth day of the month following the sale, a written declaration that certifies that the goods have been transported or shipped by the buyer or a third party on his behalf, and which must show the Member State of destination of the goods, the date of issue, the name and address of the buyer, the quantity and the nature of the goods sold, the date and place of their arrival, the identification of the person who accepted the goods on behalf of the purchaser and, in the case of means of transport, the identification number of the vehicle. In addition to this declaration, the *BIS*, issued by two different independent parties, one from the other, by the seller and by the buyer or by a transport document referred to in letter a) cited together with a document relating to the other means of proof indicated in letter b) of the same paragraph 3.

As clarified in the Explanatory Notes of the EU Commission *quick fixes* 2020, is excluding the application of the presumption that the goods have been transported or dispatched to another Member State, if the transport or shipment has been carried out by the transferor or the transferee by his own means without the intervention of other subjects such as, for example, the forwarder or the transporter (par. 5.3.5).

The presumption contained in article 45- *BIS* of Regulation no. 282 of 2011 is applicable only if the documentation held by the taxpayer meets the requirements set out therein. However, the tax authorities of EU countries still retain the right to overcome the presumption of intra-community transport or shipment (see paragraph 2 of the aforementioned article 45-bis).

Similarly, the taxpayer retains the possibility of demonstrating, if he is not in possession of the documentation specifically required by the Union provision for the purpose of applying the presumption, with other objective elements of proof, that the transaction actually took place (see also par. 5.3.3. of the Explanatory Notes).

Article 45- *BIS* in fact, the comment does not preclude Member States from applying additional national rules or practices regarding proof of intra-community supplies, possibly more flexible than the presumption provided for by the VAT Regulation (see par. 5.3.2).

Having thus reconstructed the current community regulatory framework, it should be noted that the recent circular no. 12 / E of 12 May 2020 provided clarifications in this regard; in particular, in the aforementioned document of practice it is specified that "*at present, in all cases in which the presumption referred to in article 45-bis is not applicable, the national practice may continue to apply, even adopted before the entry into force of the same article in terms of proof of transport intra-community of goods. In any case, it is understood that this national practice identifies documents, the suitability of which to prove that Community transport has taken place is in any case subject to the assessment, case by case, of the financial administration (see Explanatory Notes, par. 5.3.3.).*

Before the entry into force of Article 45- *BIS* of Regulation 282/2011, the writer had provided some clarifications on the matter; also for this purpose, please refer to the indications contained in the aforementioned circular no. 12 / E of 2020.

Finally, as regards the question relating to the relevance of the information provided in resolution no. 19 / E of 2013 regarding the conservation of the

documentation certifying the proof of transport or shipment of the goods by the supplier, on its exhibition as well as on the timing of its acquisition, the aforementioned indications are still considered valid.

THE CENTRAL DIRECTOR

(digitally signed)