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By PwC Deutschland | 07 October 2021

The transfer of inventory existing in Italy as part of a transfer of going concern carried out abroad is an autonomous supply of goods for VAT purposes

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In brief

With the reply to ruling no. 637, dated 30 September 2021, the Italian tax authorities provided clarifications on the correct treatment applicable for VAT and registration tax purposes to the transfer of inventory existing in Italy included in a wider transfer of going concern carried out abroad.

In detail

After having provided clarifications on the transfer of trademarks registered in Italy included in a wider transfer of going concern carried out abroad with the previous reply to ruling no. 536, dated 06 August 2021 (see our newsletter dated 26 August 2021), now, with the reply to ruling no. 637, dated 30 September 2021, the Italian tax authorities provided clarifications on the correct treatment applicable for VAT and registration tax purposes to the transfer of inventory existing in Italy included in a wider transfer of going concern carried out abroad.

This time, the applicant is a company established outside the European Union which, with an act formed abroad, sold its principal business, including also an inventory existing in Italy (in particular, semiconductor processing equipment and spare parts), to another company not established in the European Union (hereinafter also “acquiring company”). No other assets existing in Italy were included in the transfer of going concern. Moreover, neither the Applicant, nor the acquiring company have a permanent establishment in Italy.

In such circumstances, the applicant company asked the Italian tax authorities to confirm that the transfer of inventory included in the transfer of going concern carried out abroad should be considered for VAT purposes as an autonomous supply of goods according to article 2, paragraph 1, Presidential Decree no. 633/1972 and not as an integral part of a transfer of going concern, outside the scope of VAT according to article 2, paragraph 3, letter b), Presidential Decree no. 633/1972, and that for the transfer of the inventory no registration tax is due.

With reference to the first question, on the basis of the same motivations argued in the previous reply to ruling no. 536, dated 06 August 2021, missing a business existing in Italy, the Italian tax authorities clarified that also the transfer of inventory existing in Italy between the applicant and the acquiring company, acting as the purchaser of a business existing abroad, cannot be considered outside the scope of VAT according to article 2, paragraph 3, letter b), Presidential Decree no. 633/1972. On the contrary, the transfer of inventory should be qualified for VAT purposes as an autonomous supply of goods, according to article 2, paragraph 1, Presidential Decree no. 633/1972, which, considering that the goods are existing in Italy, is relevant for VAT in Italy from a territorial point of view according to article 7-bis, Presidential Decree no. 633/1972.

As regards the second question, the Italian tax authorities reaffirmed that, considering that the transfer of going concern, including the inventory existing in Italy, occurred with an act formed abroad and that no business is existing in Italy, neither the provision set forth by article 2, letter d), Presidential Decree no. 131/1986 (hereinafter, “Registration tax code”) nor the proportional 3% rate set forth by the Tariff, First Part,

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article 2, attached to the Registration tax code find application.

By the way, where the case of use occurs, according to article 6 of the Registration tax code, the act of sale should be registered applying the registration tax in a fixed amount of 200 euro as established by the Tariff, Second Part, article 11, attached to the Registration tax code.

Let’s Talk! For a deeper discussion, please contact:

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Keywords

VAT