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**INTERNATIONAL TAXATION**
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# ITALY-SAN MARINO ELECTRONIC INVOICING: WHEN THIS IS NOT MANDATORY

A foreign supplier identified for VAT purposes in Italy (through direct identification or fiscal representative) is not obliged to issue an electronic invoice for a supply of goods in favour of a customer resident in the Republic of San Marino. This is clarified by the Italian Revenue Agency in its answer to the questioning no. 557 of 17.11.2022 on the basis of the following considerations.

**The legislative framework**

The national legislation regulating electronic invoicing (Article 1, paragraph 3, Italian Legislative Decree No. 127/2015) establishes that "subjects resident or established in the territory of the State" are required to issue electronic invoices through the Interchange System (SDI), not mentioning in this regard subjects only identified for VAT purposes in Italy, who are therefore not obliged to issue electronic invoices. The possibility for these subjects to issue e-invoices via SDI on a voluntary basis remains.

However, the Ministerial Decree of 21 June 2021, which introduced the obligation of e-invoicing in the trade of goods between Italy and the Republic of San Marino, in Articles 1, 2 and 3 refers to electronic invoices issued by taxable subjects resident, established or identified in Italy to economic operators of San Marino and transmitted through the SDI.

Therefore, on the basis of a literal interpretation of the Italian Ministerial Decree of 21 June 2021, it seemed that the obligation to issue electronic invoices was extended also to foreign subjects identified for VAT purposes in Italy who supply goods in favour of subjects resident in San Marino; this was in contrast with the provisions of the national legislation regulating electronic invoicing (Article 1, paragraph 3, Legislative Decree No. 127/2015), which excludes foreign subjects identified for VAT purposes in Italy from the obligation to issue electronic invoices.

**The Revenue Agency's clarifications**

On this topic, the Italian Revenue Agency, in its response to the questioning under review, clarified that foreign subjects identified for VAT purposes in Italy must remain excluded from the obligation to issue electronic invoices for the supply of goods to the Republic of San Marino by virtue of the provisions of Article 4 of Ministerial Decree. 21 June 2021 according to which "Economic operators resident, established or identified in Italy, who for supplies of goods dispatched or transported to the Republic of San Marino are not obliged to issue an electronic invoice, may issue the invoice in electronic format or, alternatively, in analogue format pursuant to this Article".

On the basis of this Article, the Italian Revenue Agency considers that, since foreign subjects only identified for VAT purposes in Italy are exempted from the electronic invoicing obligation on the basis of the provisions of the national legislation regulating electronic invoicing (Article 1, paragraph 3, Legislative Decree no. 127/2015), they are not obliged to issue an electronic invoice for the supply of goods shipped or transported to the Republic of San Marino, but may issue the sales invoice also in analogue format.

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