

Italian tax investigations on e-commerce, e-gaming operators reflect heightened enforcement

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In brief

In recent years, the Italian tax authorities (ITA) and public prosecutor offices have been conducting tax investigations on e-commerce and e-gaming operators, resulting in various challenges from both VAT and income tax perspectives. Such actions reflect increasing enforcement efforts by European tax authorities, including VAT investigations in e-commerce areas.

In detail

VAT investigations on low-price online retailers

The ITA and public prosecutor offices have successfully pursued VAT “carousel frauds” — where a “missing trader” issues false invoices toward another company for the sole purpose of allowing the latter to deduct input VAT — in a number of cases related to online retailers that were known among Internet users for providing competitive prices on a variety of items, especially technological goods.

In these cases, the ITA and public prosecutors alleged that discounted prices were made possible by VAT fraud. In turn, the authorities have expanded their focus to cover other operators of online retail shops.

The consequences of these investigations also could negatively affect VAT liability of purchasers. More specifically, Article 60-bis of the Italian VAT Decree sets out joint VAT liability of the purchaser and the seller where goods were sold at underpriced values and the retailer did not pay the related VAT. The types of goods affected include potentially cars and motor vehicles, phone products, and computers (as well as the respective components and accessories).

Purchasers may challenge joint VAT liability on the grounds that certain factual circumstances or specific legal provisions led to the underpricing of the goods and that there is no link to the seller’s failure to pay the appropriate VAT.

Challenges under Article 60-bis do not require the ITA to come forward with evidence of fraud, but when evidence exists, the webpages (including social media platforms) of the relevant online retailers are seized and shut down. When fraud is specifically alleged, the purchaser then must come forward with specific evidence that it was unaware or incapable of being aware of the alleged fraud so as to disprove any possible involvement.

Tax and anti-money laundering challenges on e-gaming platforms

In pursuance of its circular letter no. 1 of 2018, the Tax Police must ascertain whether gaming operators fulfil all obligations set forth in the relevant anti-money laundering law, such as whether

the operator gathered requisite information on clients (and their personal data), types of transactions, and payment instruments.

Moreover, checks and inquiries on anti-money laundering fulfillments may reveal a reuse of profits and other benefits deriving from prior crimes, including those consequent to relevant breaches of tax law, leading to further criminal liability for money laundering or self-money laundering. For this reason, the ITA and the public prosecutors have focused on the tax conduct of operators. In appropriate cases, a tax challenge exceeding thresholds of criminal relevance could entail further prosecution for money laundering crimes. Moreover, whereas only individuals may be charged with

tax crimes, corporations also are subject to potential criminal liability for money laundering (and self-money laundering).

Hence, from a tax perspective, there is a specific focus on tax residence and permanent establishments of e-gaming companies, which requires a better understanding of where (i) strategic business decisions are taken by the management and (ii) the consequent business actually is carried out.

With respect to the permanent establishment of e-gaming operators, tax auditors are allowed a presumption of a “virtual” permanent establishment, which triggers the pre-

assessment process and places the burden of proof on the enterprise.

The takeaway

Increased tax investigations of e-commerce and e-gaming operators derive from today’s digital economy and contemporary developments in the global tax environment.

Therefore, the usual sensitivity of the ITA toward VAT fraud and collection and toward issues of tax residence and permanent establishment has intensified. In turn, this calls for a diligent approach in the early stages of an investigation, particularly considering the potential for criminal liability.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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