



## THE ITALIAN REVENUE AGENCY EXPLAINS REVERSE CHARGE METHOD APPLIED TO SALES OF GAME CONSOLES, PCS, TABLETS AND LAPTOPS

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The Circular No. 21/E of Italian Revenue Agency (hereinafter “the Circular”) clarifies, through a series of explanations, the reverse charge method introduced by Italian Legislative Decree No. 24 of 11 February 2016 entered into force on May 2nd 2016.

The above cited Decree extended the reverse charge method to sales of game consoles, PCs, tablets and laptops, as well as to integrated circuit devices such as microprocessors and central processing units, transferred prior to their installation in products for the end user.

In compliance with article 119-bis of EU Directive, the Decree provided that the reverse charge is applied to these cases on a temporary basis until 31 December 2018.

According to the above EU Directive, until 31 December 2018 and at least for two years, Member States may provide that VAT-taxable dealer is the who buyes the game consoles, PCs, tablets and laptops are made.

The Circular specifies that reverse charge method refers only to the sales of goods made during the distribution before the retail commerce.

This explanation is coherent with the provisions contained in the circulars No. 59/E/2010 and No. 36/2011, where the Italian Revenue Agency affirmed that reverse charge method does not apply to the sales of mobile phones made by authorized retailers in public places, in indoor stores, trough distribution equipment, for correspondence, at domicile or by peddlers, because these sales generally are made to final user assegnees, even though VAT-taxable dealer.

The reason of this explanation is that it would be excessively onerous to apply the reverse charge method to the retail sales, specially if compared with the typical frequency of the retail sales.

Considering that article 117, Paragraph 6, lett. c) of Presidential Decree (DPR) No. 633/1972 specifies that the reverse charge method is applied to the sales of "game consoles, PCs, tablets and laptops", it follows that reverse charge does not apply to the sales of Pcs which are not included in those categories, for which VAT must be paid with ordinary method.

For example, an accountant who buys a tablet for his job has to pay VAT with ordinary method, because it is a retail sale.

While, in case of a tablet sold to a VAT-taxable dealer (for example, when the accountant invoices the tablet to dealer), reverse charge method is applied.

The Circular specifies that, in order to have a right identification of goods subject to reverse charge method, it is necessary to use the nomenclature code: i) code 9504.50.00 for game consoles; ii) code 8471.30.00 for tablet and laptop.

According to the Circular, it is not important the "commercial classification" of goods, but the fact that they have the same commercial quality, technical characteristics and nomenclature code (NC).

The Circular does not explain how to apply the application rules of reverse charge method.

The Circular reminds that the buyer, if taxable dealer, must pay VAT instead of the seller, who has to invoice without VAT, mentioning the rule of law that provides the rule of reverse charge method (article 17, Paragraph 6 of DPR No. 633/1972).

The buyer, instead, has to add to the invoice the aliquot and VAT and also to make a note of it in the register of issued invoices or in register of VAT payment, within the month of receipt or later, but anyway within fifteenth day of receipt and with reference to the reported month.

The Circular explains also that the buyer has to pay VAT with reverse charge method even if he does not has in Italy a permanent establishment.

Furthermore, the Circular provides some clarifications about the penalty in the case of omitted or mistaken application of reverse charge method, introduced by legislative Decree No. 471/1997.

About this, Italian Legislative Decree No. 158 of 24 September 2015 has completely rewritten Art. 6, paragraph 9-bis, of Legislative Decree No. 471/1997, also introducing new paragraph 9-bis1, 9-bis 2 and 9-bis 3.

The Decree says that, if the application of reverse charge method is totally omitted, a sanction between € 500.00 and € 20,000.00 is applied (under Art. 6 Paragraph 9-bis of Legislative Decree No. 471/1997). Instead, in the case of wrong application of reverse charge method, both without and with the requirements for its application, a sanction between € 250.00 and € 10,000.00 is applied (under Art. 6 Paragraph 9-bis 1 and 9-bis 2 of Legislative Decree No. 471/1997).

Finally, the Circular explains that the mentioned sanctions will be applied only to violations committed after the May 25th 2016 (date of emission of Circular), because the legislative news (as introduced by the Legislative Decree No. 24/2016) rule transactions already carried out since last May 2nd 2016 (data on entry into force of the Decree).



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