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# Opinion Statement FC 5/2023 on Official Ruling 57:2023 of the Italian Central Tax Office on Intervening Fixed Establishments in a VAT Context

Issued by CFE Tax Advisers Europe

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CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Bruno Gouthière, Chair of the CFE Fiscal Committee or Aleksandar Ivanovski, Director of Tax Policy at [info@taxadviserseurope.org](mailto:info@taxadviserseurope.org). For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

## 1. Background

This Opinion Statement explains the views of CFE Tax Advisers Europe concerning the Official Ruling 57/2023 given by the Italian Central Tax Office (Agenzia delle Entrate – Divisione Contribuenti – Direzione Centrale Grandi Contribuenti e Internazionale) on 17 January 2023 on intervening fixed establishments in a VAT context. CFE is issuing this Statement because we consider that it is material to the correct treatment of intra-Community supplies.

## 2. The Official Ruling

The ruling relates to a case where a company established in Germany, for the purposes of the ruling called Alfa G, also had a fixed establishment in Italy. While the Italian establishment may have participated in concluding contracts for the sale of the goods, the ruling related to goods that were collected directly from the German main establishment by its Italian customers who were also taxable persons. The ruling states that:

- if Alfa G's Italian fixed establishment's activity is limited to the performance of administrative support then even if it concludes contracts in the name of Alfa G's main German establishment, the Italian fixed establishment is not sufficiently involved in the transaction, and it is therefore not subject to any VAT compliance obligations in respect of the transactions as a result of article 192a of the VAT Directive and article 53 of EU Regulation 282/2011;
- however, if Alfa G's Italian fixed establishment is more heavily involved in the transactions, it considers that it will have to account for VAT on the intra-EU acquisition and also account for tax on the basis that it has made an onward domestic supply to the Italian customer. This is despite the fact that the goods were collected in Germany directly by the Italian customer. It considered that this liability was implicit from article 192a of the VAT Directive.

## 2. CFE's View on the Ruling

CFE Tax Advisers Europe consider that there should be no liability on the Italian fixed establishment of Alfa G in either case. In this regard we observe that:

- a) the European Commission in its VAT Committee Working Paper 791 dated 15 January 2014 and Working Paper 857 dated 6 May 2015 correctly observes that the place of supply of goods is generally determined by the location of the goods when the supply occurs, so that the place where a business is established is irrelevant when determining the place of supply of goods: see in particular para 3.1 of Working Paper 791 and para 3 of Working Paper 857, where it is noted that it is important to avoid the risk of misuse of the fixed establishment rules when taxing supplies of goods. It also accepted that Article 53 of Regulation 282/2011

and Article 192a of the VAT Directive do not specifically focus on either domestic or inter-Community supplies: see para 3.3 of Working Paper 857.

- b) under Article 32 of the VAT Directive the place of supply of the goods is clearly in Germany in these circumstances.
- c) it follows that that the intra-Community acquisition of the goods should be by the Italian customer who collected and shipped them from Germany and was owner of them: see Article 200 of the VAT Directive.

In reaching the contrary view, the Italian tax office seeks to place reliance on the fact that Article 192a of the VAT Directive states that a fixed establishment is not liable for VAT on a supply of goods or services if it does not intervene in the supply. However, it is important to observe that Article 192a does not state that a fixed establishment is automatically liable for VAT in circumstances where Article 192a does not apply, it instead makes it clear that the fixed establishment has no liability if it does not materially intervene in the or making of the supply.

We consider that it follows that:

- a) the issue of whether the fixed establishment has any liability instead has to be determined by the place of supply rules. Since Article 32 of the VAT Directive makes it clear that the place of supply of the goods to the Italian customer is in Germany, there is no basis for making the Italian fixed establishment of Alfa G or Alfa G itself liable for tax on a supply of goods because no supply of goods has been made by Alfa G its fixed establishment in Italy;
- b) the only transaction that has taken place in Italy is an intra-Community acquisition of goods by the Italian customer and it is the Italian customer that is liable to account for VAT on that acquisition under Article 200 of the VAT Directive.

For these reasons we consider that Alfa G should have no liability in these circumstances even if its Italian fixed establishment can be considered to have intervened in the supply of the goods.