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To all
clients

Circular No. 19/2024

Bolzano, 4 May 2024

Subject: VAT changes March – April 2024

With this circular we would like to inform you of the relevant changes in the field of VAT in recent weeks:

1. VAT credits UK:
By ruling of 2 May 2024, the Italian Revenue Agency confirmed that, since 7 February 2024, an agreement between Italy and the United Kingdom has been in force which allows the mutual refund of VAT. The agreement had become necessary following the country's withdrawal from the EU, because the relevant refund procedures for the EU member states no longer apply to the United Kingdom.
Under the agreement, the relevant application must be submitted within the usual deadlines and therefore by 30 September of the following year at the latest. The provision is moreover applicable retroactively as from 1 January 2021. It follows that: a refund of UK VAT for the year 2023 may in any case now be applied for, but the wording also permits the conclusion that – although the relevant deadlines expired long ago – an application may also still be submitted for the years 2021 and 2022.

<u>Note: in view of the legal position outlined above, we recommend submitting a refund application for the years 2021 and 2022 immediately; in the worst case it will be rejected.</u>

2. Electronic invoices in the case of foreign companies:
The Italian Revenue Agency allows foreign companies with direct registration or a fiscal

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representative in Italy to issue electronic invoices to their Italian business customers for transactions taxable in Italy.
As is known, in these B2B transactions the tax liability passes to the recipient of the supply or customer (reverse charge), who is obliged to account for the acquisition. The foreign entrepreneur must issue the invoice to the Italian business customer not (!) via its Italian VAT position, but via that of the foreign parent company. That invoice must state that the tax liability passes to the customer. An invoice with Italian VAT may therefore not be issued.
It must be noted here that Italian customers have in the meantime become accustomed to receiving electronic invoices for all their purchases.
In this respect, binding ruling No. 58/2024 now sets out a new approach in order to meet the internal accounting requirements of Italian customers. Foreign companies registered for VAT purposes in Italy are permitted to issue electronic invoices via the SdI platform and thus transmit them to the customer (B2B). For these invoices, however, code “N2.2” (not taxable or outside the scope) must be used, thereby indicating that the invoice serves accounting purposes only. As mentioned, the invoice must state that the tax liability passes to the customer.

3. VAT credits and permanent establishments of foreign companies.
Foreign companies that have a permanent establishment in Italy may reclaim any credit only within the assessment procedure and not via the refund procedure. The Italian Revenue Agency clarified this in binding ruling No. 87 of 8 April 2024, thereby confirming a judgment of the Court of Cassation (No. 25685/2023).
The answer is not satisfactory, because it does not distinguish between a permanent establishment for income tax purposes and one for VAT purposes. Since the administrative instructions surrounding EXPO in 2015 at the latest, it has been clear that a permanent establishment for income tax purposes does not necessarily also have to be one for VAT purposes, and vice versa.

4. Shell companies and input VAT deduction
By judgment C-341/22 of 7 March 2024 (case “Feudi di San Gregorio Aziende Agricole SpA”), the European Court of Justice (ECJ) declared the prohibition on the input VAT deduction applicable in Italy for so-called non-operating or dormant companies to be unlawful, because it contravenes the principles of the VAT System Directive.
As a reminder, the restrictions currently applicable to the input VAT deduction in the case of dormant companies:
- In the annual return in which the VAT surplus is reported, neither a refund may be applied for nor an offset against taxes owed carried out; only a carry-forward is therefore possible.
- If the prescribed turnover is not achieved for three consecutive years, the credit may not be carried forward either. The input VAT deduction is effectively lost.

According to the ECJ, such a rule contravenes EU law. The ruling is not directly applicable, but it is to be hoped that Italy will adapt its provisions to this ruling as soon as possible. In the meantime, the judgment is certainly a great help wherever, in the past, the tax authorities have disallowed the input VAT deduction or the VAT refund by reference to the above provisions.

We are of course happy to provide you with further information and documents.

Yours sincerely
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