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To all
clients

Circular No. 19/2025

Bolzano, 10 April 2025

Subject: VAT credit notes in insolvency and composition proceedings – be sure to observe the 30 April 2025 deadline!

The question arises again and again whenever invoices issued to customers become uncollectible as a result of insolvency or composition proceedings: from when and until when may a credit note still be issued, at least for the VAT that has not been collected?

The relevant provisions are found in Art. 26 of the VAT Act, specifically in paragraphs 2 and 3. Paragraph 2 provides in general terms that, in the case of adjustments due to nullity, annulment, revocation, termination and "similar cases", or due to contractually agreed discounts or rebates, the supplier or service provider may adjust the VAT. In practice, given the recording deadlines, this may be done up to the filing of the annual VAT return for the year in which the relevant circumstance occurred. Where the aforementioned circumstances arise from changes agreed between the parties, or from the correction of errors, the adjustment may only be made within one year of the supply being made.

The one-year deadline does not apply to insolvency proceedings. In such cases a credit note may be issued even after one year has elapsed. As regards the question "from when?", a distinction

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must be drawn between insolvency proceedings that commenced before and those that commenced on or after 26 May 2021.

- For insolvency proceedings opened before 26 May 2021, credit notes with VAT within the meaning of Art. 26 of the VAT Act may only be issued from the date on which the proceedings are definitively concluded.
- For proceedings opened on or after 26 May 2021, on the other hand, pursuant to Law Decree No. 73/2021 a credit note for the VAT may be issued as early as the opening of the insolvency proceedings. Accordingly, the relevant reference dates for proceedings opened on or after 26 May 2021 are set out once again below:
- the date of the judgment opening bankruptcy proceedings,
- the date of the order admitting the debtor to court-supervised composition proceedings ("concordato preventivo"),
- the date of the order for compulsory administrative liquidation proceedings (in the case of cooperatives),
- the date of the homologation of a debt restructuring procedure (Art. 182-bis of Royal Decree No. 267/1942),
- the date of publication in the Companies Register of the certified debt restructuring plan in the case of procedures within the meaning of Art. 67 para. 3 letter d of Royal Decree No. 267/1942, and
- the date of the order for extraordinary administration proceedings for large undertakings.

In Rule of Conduct No. 222 of September 2023 issued by the Italian association of chartered accountants and tax advisors AIDC, the view is also taken that the longer deadline under Art. 26 paragraph 2 of the VAT Act may also be applied to settlements aimed at resolving disputes, provided this can be duly documented.

- Unsuccessful individual enforcement measures for the collection of the receivable also constitute grounds for issuing a credit note.

It is apparent from the above list that, in the case of bankruptcy proceedings, court-supervised composition proceedings and extraordinary administration of large undertakings, as well as compulsory administrative liquidation proceedings, the point in time for the credit note has been brought forward to the opening of the respective proceedings.

In the case of the debt restructuring procedures indicated above, and also in the case of individual judicial collection proceedings, the deadline from which the credit note may be issued continues to be determined by reference to the conclusion of the proceedings or to the unsuccessful outcome of the collection proceedings.

The question then remains until when a credit note with VAT may be issued where insolvency proceedings or a settlement, as described above, exist. In this respect, Reply No. 50/2022 of the Italian Revenue Agency is relevant, which states:
A credit note with VAT must be issued at the latest by the deadline for the annual VAT return for the year in which the conditions were met, and if the credit note is only issued between 1 January and 30 April of the following year, then the VAT may be deducted in the month or quarter in which the credit note was issued, or in the annual VAT return for the following year.
For the year 2024, this means the following:

For all insolvency and composition proceedings in respect of which the conditions for issuing a credit note with VAT were met in the 2024 calendar year (either because proceedings dating from before 26 May 2021 were concluded, or because new insolvency or composition proceedings were opened in 2024), the credit note could be issued in the course of 2024 with deduction of the VAT in the relevant settlement period; alternatively, the credit note may still be issued in the period between 1 January 2025 and 30 April 2025, in which case the input VAT must be deducted either in the month or quarter of issue or else in the annual VAT return for 2025 in April 2026.

<u>If these deadlines are missed, the recovery of the invoiced and uncollectible VAT is, in principle, lost.</u>
There are, however, still two remedies available:
- Insofar as the failure to issue the credit note is not attributable to culpable omission on the part of the taxable person (because, for example, it can be demonstrated that the person was not informed of the closure of the insolvency proceedings), a separate application may still be filed for a refund of the lost VAT within the meaning of Art. 30-ter para. 1 of the VAT Act. From personal experience we can confirm that such applications are indeed processed by the competent offices.
- In rare cases, a supplementary return for the annual VAT return may also be filed.

We remain at your disposal for any further information.
Yours sincerely
Josef Vieider