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To all
clients

Circular No. 41/2024

Bolzano, 18 November 2024

Subject: **Secondment of staff subject to value added tax from 1 January 2025**

We have already informed you of this: by judgment No. C-94/19 of 11 March 2020, the European Court of Justice declared the Italian rule in Art. 8 of Law 67/1988, under which secondments of staff are not subject to value added tax in so far as only the costs incurred – i.e. without any margin – are recharged, to be contrary to EU law and called on Italy to amend its legislation accordingly. Last summer the Italian supreme court followed suit: by judgment No. 22700 of 12 August 2024, the Court of Cassation reached the same conclusion.

The legislator has now taken account of these findings of the case-law, and it must be acknowledged favourably that an unambiguous date for the change has been enacted and that transitional rules have also been laid down. Here are the details:

With the conversion into law of Law Decree No. 131/2024 of last September (Conversion Law No. 166/2024, published in the Official Gazette of 15 November) it is clarified that recharges arising from the provision or secondment of employees fall, from 1 January 2025, within the scope of VAT and are accordingly to be invoiced at the standard rate, currently 22%, and this irrespective of whether only the costs incurred are recharged or whether a mark-up is also

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charged.
The abolition of the special Italian provision in Law No. 67/1988 mentioned at the outset applies to agreements newly concluded or extended from 1 January 2025. For older contracts the previous rules should remain in force until they expire or are amended. And conversely: in so far as, following the above-mentioned case-law of the ECJ, secondments have already been invoiced with value added tax in the past, the right to deduct input VAT on those invoices is not called into question, in line with the general protection of legitimate expectations, as was moreover already suggested by Assonime in its Circular No. 8/2020.

Between undertakings entitled to full input VAT deduction, the change will as a rule at least have no economic effects. This is not the case where secondments take place between undertakings with a limited input VAT deduction, e.g. to banks and insurance companies or also to agricultural undertakings which have opted for the flat-rate scheme and are not entitled to deduct input VAT pursuant to Art. 34 of the VAT Act.
Adverse effects may also arise for secondments to non-commercial entities, i.e. to associations and federations, which as a rule do not carry out any taxable transactions and consequently do not hold a VAT position either. From 2025 the provision or secondment constitutes a supply of services within the scope of VAT and subject to VAT, which will require the opening of a VAT position. Invoicing with VAT in any event results here in an additional burden.
In the case of cross-border secondments it should be noted that these services fall under the other services within the meaning of Art. 7-ter of the VAT Act; in so far as secondments are made to undertakings abroad, these are therefore to be invoiced without VAT. Conversely: in so far as Italian undertakings receive secondments from abroad, the invoice must, from 1 January 2025, be supplemented with Italian value added tax.

Note: in any event it is advisable to review existing agreements on the secondment of employees in the light of the changes outlined.

We are of course at your disposal for any further information.
Yours sincerely
Josef Vieider