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To all
clients

Circular No. 46/2024

Bolzano, 9 December 2024

Subject: Year-end notes 2024

Below are some notes for administration and accounting at the year-end:

1. Invoicing at the year-end:

When issuing invoices, and in particular as regards the input VAT deduction on incoming invoices, a number of special features must once again be observed at the year-end. And contrary to all the reform promises of recent times, nothing has changed this year either, and it remains complicated.
The rules in force on electronic invoicing and on the input VAT deduction once again give rise to a number of special features at the year-end. In this respect the following principle must be observed in particular: the issue date of an electronic invoice is deemed to be the date on which the invoice is uploaded to the SdI platform. Special rules apply
at the year-end, however – as in previous years – with regard to the input VAT deduction for incoming invoices. Below is an overview:

1.1 Outgoing invoices at the year-end:

Here it should first be recalled that invoices for services must be issued at the latest at the time of payment, and invoices for supplies of goods in principle at the latest upon handover of the

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goods, unless payment has already been made beforehand. Since the introduction of the electronic invoice, however, a simplification applies: the invoice itself may be issued and sent within the following 12 days, but must then state separately the date of the transaction; as a reminder: previously, invoices had to be drawn up by 24.00 hrs of the day on which the transaction was carried out, with the sole essential difference that delays could not be detected where the invoice was correspondingly backdated. In the case of supplies which are, however, documented by accompanying documents, a monthly collective invoice may also be issued as a “deferred invoice”; this collective invoice, which in theory may also relate to only a single documented supply, must be issued at the latest by the 15th of the following month, whereby the VAT must nevertheless be accounted for in the settlement for the month of the supply.

These deadlines must be observed most scrupulously, especially since the grace periods for suspended and reduced administrative penalties have all lapsed. The Italian Revenue Agency last drew attention to this in Reply No. 528 of 16 December 2019. In practice, the following cases arise at the turn of the year:

- If a service is paid for on 16 December 2024, for example, the invoice must be issued with the “date of the transaction” 16.12.2024, and this at the latest within 12 days from that date, i.e. by 28.12.2024, and this date also marks the deadline by which the invoice must be sent via the SDI platform.
- The same deadlines also apply in the case of immediate invoicing of supplies of goods.
- If the invoice for a service which has not yet been paid is issued for administrative reasons – as is generally customary – with the date 31 December 2024 (issue date 31.12.2024), it must be sent via the platform at the latest within 12 days, i.e. by 12 January 2025 (in practice 13 January 2025 because of the public holiday), and the corresponding VAT must be accounted for in the settlement for December 2024.
- If an invoice for supplies of the month of December which are documented by transport documents is drawn up as a “deferred” (collective) invoice, either the date of the last supply must be stated as the issue date, or the last day of the month may also be given as the issue date (to this effect Reply No. 389 of 24 Sept. 2019). In the special case of this deferred invoicing, the invoice may also be sent only by 15 January 2025. The corresponding VAT of this collective invoice must likewise be taken into account in the settlement for December 2024 on 16 January 2025.

1.2 Incoming invoices and input VAT deduction at the turn of the year:

Here it should be recalled that at the year-end the prescribed annual date cut-off of the annual VAT return must be observed, which, on account of electronic invoicing, can be checked precisely. It follows that:

- An invoice with issue date 2024 which is sent by the supplier via the SDI portal only in 2025 and which therefore arrives only in 2025 may be recorded in the register of incoming invoices only in 2025, and the input VAT is deductible only in 2025. It is therefore not permissible to deduct the input VAT on an invoice sent on 2 January 2025 in the December settlement, even if the supply of goods or services was still made in December and even if the issuer still has to pay the VAT with the December settlement.

Example 1: invoice issued on 31.12.2024 and invoice received on 31.12.2024: deduction of the input VAT in December 2024

Example 2: invoice issued on 31.12.2024 and invoice received via the SDI portal on 3 January 2025: input VAT deduction in January 2025

- The next case, however, is more cumbersome: for an invoice with issue date 2024 which also duly arrives electronically in 2024, but which for administrative reasons (e.g. because it still has to be checked by the purchasing department) is recorded only in January or February 2025, the input VAT may not be deducted in the month of recording (e.g. January or February), but only in the annual VAT return for 2024.

For monthly filers, a 13th VAT settlement must therefore be drawn up in practice. Depending on the software, it may be necessary to set up a separate VAT register for these invoices in order to achieve a clear separation in the VAT settlement. In any event, these invoices lead to a discrepancy between the December monthly settlement and the annual VAT return.

- If, for whatever reason, an invoice issued and sent in 2024 is recorded only after the annual VAT return for 2024 has been filed in April 2025, the input VAT is admittedly not lost, on account of the principle of VAT neutrality, but it is necessary to file a new annual VAT return for the year 2024 and to include the corresponding input VAT in it. This causes problems in particular where the VAT return is filed early, in the first days of February, because of a credit to be reclaimed, and then subsequently has to be corrected once again.

For the invoices received at the year-end, the following cases therefore arise for monthly filers:

Issue date	Receipt via SDI	Recording of incoming invoice	Input VAT deduction
Dec 2024	Dec 2024	Dec 2024	Settl. Dec 2024
Dec 2024	Dec 2024	Jan 2025	VAT return 2024
Dec 2024	Jan 2025	Jan 2025	Settl. Jan 2025
Jan 2025	Jan 2025	Jan 2025	Settl. Jan 2025

What is decisive in this connection is not the date stated on the invoice, but the issue date resulting from the transmission to the SdI platform, which constitutes the actual invoice date.
<u>Important: at the year-end it should absolutely be checked that all invoices received by 31 December 2024 are also still recorded in the settlement for December 2024, because otherwise the input VAT (see case 2 above) is deductible only in the annual VAT return for 2024 in April 2025!</u>
<u>At the same time, important suppliers should be invited not to send their December invoices only on New Year’s Eve, but perhaps a few days earlier, in order still to allow receipt in 2024 and the input VAT deduction in the month of December.</u>

Reverse charge – foreign transactions

In the case of invoices which have to be supplemented under the reverse charge mechanism, the date of receipt of the invoice is decisive, and no special rules apply here at the turn of the year: accordingly, the general provision under Art. 47 Law Decree 331/1993 applies, according to which such invoices must be supplemented and recorded at the latest by the 15th of the month following receipt (but always with reference to the month of receipt). All invoices received in December 2024 must therefore be taken into account in the VAT settlement for December 2024; invoices received in January are included in the settlement for January 2025.

<u>2. Issue of credit notes with VAT for irrecoverable receivables</u>

We recall that the provisions on the issue of credit notes for irrecoverable receivables were fundamentally amended by Law Decree No. 73/2021 with effect from 26 May 2021, and the Italian Revenue Agency explained this reform shortly before the year-end in Circular No. 20/2021 of 29 December 2021.
The reform applies only to proceedings opened from 26 May 2021 onwards. For proceedings opened before that date, the rule is that credit notes with VAT within the meaning of Art. 26 of the VAT Act may as a rule be issued in insolvency proceedings from the date of the definitive conclusion of the proceedings. The final date for the issue of such credit notes is the due date of the annual VAT return for the year in which the right to issue the credit note arose. In so far as bankruptcy proceedings were therefore concluded in 2024, the corresponding credit notes may still be issued up to 30 April 2025.
For proceedings opened from 26 May 2021 onwards, on the other hand, the new rules apply. Here a credit note for the VAT may be issued as early as upon the opening of the bankruptcy proceedings. The adjustment of the tax does not have to be taken into account by the

receivership. The creditor must, however, scrupulously observe the tax period in which the entitlement to the adjustment arises. The relevant reference dates for proceedings opened from 26 May 2021 onwards are accordingly as follows:

- date of the judgment opening bankruptcy proceedings,
- date of the order admitting the debtor to composition-with-creditors proceedings (“concordato preventivo”),
- date of the order on controlled liquidation proceedings (in the case of cooperatives),
- date of the homologation of debt restructuring proceedings (Art. 182-bis Royal Decree No. 267/1942),
- date of the publication in the Business Register of the audited debt restructuring plan in the case of proceedings within the meaning of Art. 67(3)(d) Royal Decree No. 267/1942, or
- date of the order on extraordinary administration proceedings in the case of large undertakings.

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

But caution: in the case of the debt restructuring proceedings set out above, and also in the case of individual judicial enforcement proceedings, reference continues to be made to the conclusion of the proceedings or to the unsuccessful outcome of the enforcement proceedings.

Where the point in time has been brought forward, for proceedings opened from 26 May 2021 onwards the credit note may be issued as early as in the month of opening; for proceedings opened in 2023, the credit note had to be issued by 30 April 2024 at the latest; for proceedings opened in 2024 there is time until 30 April 2025. If, however, one fails to issue the credit note with VAT by then, the tax is irrevocably lost (the Agency last confirmed this in Reply No. 88 of 8 April 2024).

See also the instructions in Circular No. 20/E of 29 December 2021: anyone who has already issued the credit note for proceedings opened in 2024 must record it in the relevant settlement period, whereas anyone who issues it in the first 4 months of 2025 may deduct the VAT either in the relevant monthly or quarterly settlement or else only in the annual VAT return for 2025 in April 2026.

And the aforementioned circular contains one further important clarification: for the issue of a credit note with VAT it is no longer necessary for the creditor itself to have filed its claim in the bankruptcy proceedings (so-called “insinuazione al passivo”); as is well known, particularly in hopeless proceedings such filing was often omitted for reasons of cost, with the result that the Italian Revenue Agency declared it inadmissible to issue credit notes for the lost VAT in these

cases.
This restrictive interpretation is now declared to be obsolete by the Agency itself; it may be assumed that the relaxation also applies to proceedings opened before 26 May 2021.
Incidentally: on the deadlines for these credit notes there is the interpretation of the association of Italian business and tax advisors (AIDC) in Recommendation No. 222 of September 2023: a credit note may also be issued after the expiry of one year from the date of the transaction if the background to the credit note is not merely a subsequent agreement of intent between the parties, but a (even only potential) dispute which is settled by way of a compromise. Where such a settlement agreement exists, it therefore constitutes the basis for a credit note with value added tax even after the expiry of the one-year period.

3. Extended cash basis principle and directors' remuneration 2024 (payment by 12 January 2025 – caution: no extension because of the public holiday!)

The remuneration paid to employees and the income treated as equivalent to such remuneration for the year 2024 must be paid out by 12 January 2025 at the latest in order for it still to be allocated to the 2024 tax period and to be included in the corresponding wage tax certificates (CU) and tax returns (formerly Form 770) for 2024. Remuneration for freelance work, in particular that paid to the members of the board of directors, is deductible for tax purposes as an expense still in the year 2024 if it is paid out by 12 January 2025. It remains to be recalled that this extended cash basis principle does not apply to directors with their own VAT number: directors who invoice their remuneration had to be paid by 31 December 2024 in order for the deduction still to be allowed in the financial year.
At this point, once again as a reminder: remuneration paid to directors of companies must have been determined by a resolution of the shareholders' meeting!

Important: the Italian Revenue Agency has confirmed on several occasions in the past that the extended cash basis principle is NOT extended as a result of public holidays. Accordingly, it will as a rule be necessary to make the payments indicated on Friday, 10 January 2025. Please take this into account when planning the Christmas holidays!

4. Invoicing of the mixed use of vehicles

In so far as cars are made available to employees and freelance workers for consideration (rental agreement) for mixed use, benefits in kind must be calculated in this respect. And in this connection we recall that the corresponding invoice must be issued by 31.12.2024 at the latest.

As regards payment, in the absence of official instructions it may be assumed that the extended cash basis principle applies here as well.

5. Limitation periods

The principle is as follows: for 2018, the various tax returns had to be filed in 2019, and on 31 December 2024 any infringements in the year 2018 become time-barred. Here, however, are the exceptions:

- If a supplementary return was subsequently filed for the financial year, irrespective of whether in favour of or to the detriment of the taxpayer, the limitation periods run from the filing date of that return.
- Despite several judgments to the contrary, the Italian Revenue Agency still takes the view that it has an extended period of 85 days for the service of notices and could therefore issue assessment notices for 2018 up to 26 March 2025.
- If no return was filed for the tax period, the limitation periods are automatically extended: at the year-end, in this case only the 2016 tax period becomes time-barred, and the year 2018 will, in the absence of a tax return, become time-barred only on 31.12.2026.
- In so far as a settlement proposal for the year 2018 is served on the taxpayer in the last months of the year, the limitation periods are extended by 120 days.
- Undertakings and self-employed professionals which have undertaken to make all payments exceeding 500 euro exclusively by bank transfer and credit card, to process transactions by means of electronic invoices and receipts with electronic archiving, and to communicate the daily takings electronically to the Revenue Agency, are entitled to a reduction of the limitation periods by 2 years. It is required that the existence of the aforementioned conditions be specifically communicated in the tax return in Form RS.
- Taxpayers who are subject to the ISA indicators and who obtained at least a score of 8 there benefit from a reduction of the limitation period by 1 year; at the year-end, therefore, the 2019 tax year in principle becomes time-barred.

6. Sending of the declarations of intent for purchases without value added tax

As is well known, habitual exporters may purchase supplies of goods and services with the value added tax suspended. For this purpose it is necessary to transmit a so-called declaration of intent before the relevant transaction is carried out. Anyone who wishes to retain this status must therefore send such a declaration to the respective supplier as early as possible.

7. Reduced withholding tax for agents

Agents and intermediaries who wish to benefit in 2025 from a reduced withholding tax (23% on 20% instead of on 50%) because they themselves employ staff must submit a corresponding application to their principal by the year-end. Here, however, it should be recalled that applications submitted in previous years remain valid, in so far as the conditions continue to be met.

8. Deadline for taxpayers in default: 31 December 2024

Any overdue tax payments for the 2022 tax period may still be made good by 31 December 2024 if criminal consequences of non-payment are to be avoided. As is well known, the corresponding deadlines were extended by Legislative Decree No. 87/2024 last summer. Specifically, this concerns VAT debts from the year 2022 of more than 250.000 euro and withholding taxes for that year of more than 150.000 euro, which, if not paid by the year-end, may also be punished by imprisonment of between 6 months and 2 years. In so far as the necessary funds are lacking, at least 1/20 of the tax debt should be paid within the aforementioned period in order to avert criminal consequences.

We remain at your disposal for any further information.

Yours sincerely

Josef Vieider