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To all
clients

Circular No. 49/2024

Bolzano, 23 December 2024

Subject: Tax treatment of Christmas gifts and Christmas dinners

At this time of year, any invoices for Christmas gifts and Christmas dinners have to be recorded once again. Below are the most important rules, which – apart from the ceilings applicable to employees – have not changed compared with the previous year:

1. Christmas gifts to employees and workers treated as employees

Basic rules for IRPEF and IRES

We already informed you of this at the beginning of the year in our circular on the Budget Law for 2024: for 2024 only, tax-free benefits in kind are generally increased from 258,23 Euro to 1.000 Euro. For employees with dependent children (income of up to 4.000 Euro up to the age of 24 and income of up to 2.840,51 Euro above that age), the tax-free benefit in kind is increased to 2.000 Euro. For the sake of completeness, it should be recalled that the exempt amount was 3.000 Euro in the previous year.

Important: if this exemption threshold is exceeded, the entire amount is taxable as a benefit in kind.

Incidentally, the relief also applies to workers treated as employees (the so-called „Cococo“, i.e. primarily members of the board of directors). The exemption threshold

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expressly also applies to shopping vouchers. In this connection it should be recalled that the benefit is granted upon handover of the voucher, i.e. irrespective of whether the employee may actually redeem it only at some point in the following year.
In the case of benefits granted to members of the board of directors, we also remind you that the remuneration must be resolved upon by the competent corporate bodies.
Please note: the relief for fuel vouchers is no longer available this year.
Incidentally: unlike tax deductions, both parents may claim the full exemption thresholds separately. Example: in the case of a married couple with one dependent child, both parents are entitled to the threshold of 2.000 Euro.

VAT

No changes arise with regard to VAT: for goods that do not form part of the company's own business, the VAT charged on the purchase cannot be deducted, irrespective of the amount of the cost (this therefore also applies to low-value foodstuffs such as bottles of wine, etc.), because in the view of the tax authorities there is no business purpose in such cases.
For goods that do form part of the company's own business, on the other hand, the VAT may be deducted, and in this case VAT must in any event be charged when the goods are given away, whereby the 3 procedures set out below may be applied: invoice with the VAT being passed on, self-invoice, or gift register.
Alternatively, even in the case of gifts of goods that form part of the company's own business, the input VAT deduction on the purchase may be waived; in this case the free-of-charge transfer to employees is irrelevant for VAT purposes.
As workers treated as employees are placed on an equal footing with employees, the above rules also apply to gifts to persons engaged under a continuous and coordinated collaboration, i.e. in particular to members of the board of directors.

IRAP

For IRAP purposes, these gifts qualify as personnel costs and are therefore not deductible. In the case of companies that determine IRAP on the basis of their financial statement figures, however, the question arises whether the expenses must, by their very nature, actually be reported as personnel costs. If, for example, they are classified under B.14 as other operating expenses, they are deductible.

Set out below are also the remaining rules on Christmas gifts, in respect of which, however, no material changes compared with the previous year are to be noted:

2. Christmas gifts by companies to their clients:

Principle: Christmas gifts are entertainment expenses

Christmas gifts, with the exception of those made to employees, are as a matter of principle regarded as entertainment expenses and are therefore also subject to the corresponding restrictions. In order for the expenses to be deductible within the limits applicable to entertainment expenses, they must therefore meet the relevant requirements for this type of expense. It follows that:

- It is essential that the supplies of goods and services are made free of charge. - The expenses must be incurred for promotional purposes or sales promotion, or for public relations purposes.
- In addition, they must reasonably be expected to generate – at least potential – economic benefits for the company, or must be in line with the customary practice in the relevant business sector.
- Finally, from a formal point of view, the costs must actually have been incurred and must be documented.

Conversely: expenses that cannot be attributed to the business or that are in fact non-deductible, such as those incurred in the interest of the shareholders or of their relatives, do not qualify as entertainment expenses.

2.1. Treatment for VAT purposes

Principle

For VAT purposes, a distinction must be drawn between third-party goods, which do not form part of the company's own production or trading activity, and, conversely, goods that form part of the company's own production or trading activity.

2.1.1 Third-party goods:

Goods that do not form part of the company's own business

For third-party goods, the following applies pursuant to Art. 19-bis1 letter h) of DPR 633/1972: the VAT is deductible if the unit cost does not exceed the amount of Euro 50,00. If this threshold is exceeded, the input VAT is no longer deductible!

Provided that the above limit is not exceeded, VAT may also be deducted on foodstuffs and beverages (sparkling wines, panettone, etc.) which qualify as entertainment expenses in the manner described above. It should also be recalled that, when purchasing gift baskets and similar assortments, regard must be had not to the unit cost of the individual item but to that of the entire package.

The free-of-charge supply of third-party goods to clients and business partners within the scope of entertainment expenses is irrelevant for VAT purposes, i.e. no invoice, no tax receipt and no till receipt need be issued for such supplies. This applies irrespective of whether the unit cost is below or above 50,00 Euro. It is nevertheless advisable to issue a delivery note or a similar document in order to evidence to whom the goods were given, so that the character of the expense as an entertainment expense and the business purpose of the expense can be demonstrated in general terms

2.1.2. Goods forming part of the company's own business

Goods forming part of the company's own business

In the case of goods that form part of the company's own business, the threshold of 50,00 Euro is by contrast entirely irrelevant for VAT purposes upon purchase. Here the following applies: the entrepreneur deducts the VAT on the purchase and must then subject the free-of-charge transfer to VAT, unless he voluntarily waives the input VAT deduction on the purchase; in this latter case the free-of-charge supply is not to be taken into account for VAT purposes. The 2 cases are set out below:

1. The input VAT is deducted on the purchase: in this case the free-of-charge supply must be subjected to VAT. In practice, for this purpose

a) an invoice may be issued passing the VAT on to the recipient of the gift. The VAT Act does not require the tax to be passed on to the recipient of the gift, and this is hardly ever done. Indeed, it does not make a good impression to send a client an invoice for the VAT on a Christmas gift.MwSt. an

b) As a rule, the VAT will therefore not be passed on to the recipient of the gift; in this case a self-invoice, possibly also in the form of a summary invoice, must be issued, orMwSt. an

c) a „register of gifts" is kept, in which the free-of-charge supplies are recorded on a day-by-day basis.

Where the self-invoice option is chosen, delivery notes must also be issued, unless immediate invoicing (invoicing on the same day) is carried out.

<u>Please note: self-invoices for gifts must as a rule also be issued as electronic invoices and uploaded to the SDI portal. Pursuant to Circular No. 14/E of 17 June 2019, the issuer's data must also be entered in the fields for the invoice recipient. And, importantly: these self-invoices are to be recorded only in the sales invoice register! Taxpayers who have already implemented the changes to electronic invoicing that have been mandatory since</u>

1 January 2021 must use the code TD27 for these self-invoices.

Irrespective of whether the VAT is passed on or a self-invoice or a gift register is used, pursuant to Art. 13 of the VAT Act it is not the market value of the goods that is subject to VAT in the case of gifts; rather, the VAT must be calculated on the basis of the acquisition cost of the goods given away.

2. Waiver of the input VAT deduction: alternatively, the entrepreneur may also waive the input VAT deduction on the purchase in the case of self-produced goods or of his own trading goods, and in this case the free-of-charge supply of the goods is irrelevant for VAT purposes (i.e. no invoice, no self-invoice and no gift register are required), in the same way as for third-party goods.

2.2. Treatment for income tax purposes

Income taxes

Pursuant to Art. 108 para. of the Income Tax Code (TUIR), gifts, as set out at the outset, are as a rule regarded as entertainment expenses and are deductible in compliance with the corresponding provisions. It follows that:

- Christmas gifts with a unit value of not more than 50,00 Euro are fully deductible and they also do not count towards the calculation of the thresholds for entertainment expenses.
- If this unit value of 50.00 Euro is exceeded, deductibility is by contrast available only within the thresholds for entertainment expenses. In this connection it should be recalled that, pursuant to Art. 9 of Legislative Decree 147/2015, the following ceilings apply to the deductibility of entertainment expenses, in each case by reference to sales revenues (items A.1 and A.5 of the profit and loss account):
- 1,5 per cent for revenues of up to 10 million Euro,
- 0,6 per cent for revenues of up to 50 million Euro and
- 0,4 per cent for revenues of more than 50 million Euro.

For the purpose of determining the unit value of 50,00 Euro, ancillary costs must be taken into account; this concerns in particular the non-deductible VAT, but also any transport and packaging costs. Moreover, in the case of gift baskets, for example, the costs of the individual items (bottle of wine, packet of coffee, etc.) may not be taken as the reference; instead, the gift must be viewed as a whole; this principle incidentally also applies for VAT purposes.

IRAP

For IRAP purposes, entertainment expenses have been fully deductible since 2008, at least for corporations, since reference is now made only to the figures in the profit and loss account, i.e. without taking into account the tax reconciliation of increases and decreases. The same rules apply to partnerships and sole proprietorships, provided that the option for this method of determination for IRAP purposes has been exercised. Otherwise the expenses are entirely non-deductible.

3. Christmas gifts by self-employed professionals

Rules for self-employed professionals

The VAT rules are essentially identical to those applicable to companies, except that here the goods do not, as a matter of principle, form part of the professional's own business. Accordingly, the VAT is deductible provided that the unit cost does not exceed the amount of 50,00 Euro.

Caution: pursuant to Art. 2 para. 2 no. 4 of the VAT Act, whenever the input VAT is deducted on the purchase, the free-of-charge transfer is subject to VAT. As a result, self-employed professionals must always issue sales invoices or self-invoices in the case of gifts, or must keep the register of gifts, unless they voluntarily waive the input VAT deduction.

<u>The following recommendation therefore applies: for self-employed professionals it is advisable always to waive the input VAT deduction, even when purchasing goods with a unit cost within 50,00 Euro, in order to avoid having to subject the subsequent gift transaction to VAT.</u>

For income tax purposes, Christmas gifts also fall under entertainment expenses in the case of self-employed professionals; the following differences compared with companies must, however, be observed: the ceiling for deductible entertainment expenses is 1% of receipts; in addition, the cash principle also applies to Christmas gifts, i.e. the expenses are deductible only to the extent that they have also been paid. To the extent that self-employed professionals give Christmas gifts to their employees, these are, according to the prevailing legal opinion, fully deductible as personnel expenses for income tax purposes; the VAT, by contrast, is entirely non-deductible, as is the case for companies.

4. Christmas dinners:

Principle

A Christmas dinner does not constitute a free-of-charge supply of goods but a free-of-charge supply of services. The tax treatment differs depending on whether the Christmas dinner is held only for employees or also for third parties.

Christmas dinner only for employees

Pursuant to Circular No. 34/E2009, Christmas dinners organised exclusively for employees do not constitute entertainment expenses. It follows that:

- Income taxes: the expenses are initially deductible to the extent of 75%, whereby, however, pursuant to Art. 100 of the Income Tax Code (TUIR), an additional ceiling of 0,5% of total personnel costs applies.
- VAT: the VAT is entirely non-deductible, because in the view of the tax authorities there is no business purpose in such cases.
- IRAP: the expenses are deductible provided that IRAP is determined on the basis of the financial statement figures.

Christmas dinner not only for employees

To the extent that not only employees but also third parties, in particular potential clients, attend the Christmas dinner, the corresponding expenses are by contrast classified as entertainment expenses, with the result that

- the VAT is likewise non-deductible,
- the expenses are deductible for income tax purposes initially to the extent of 75% and then within the thresholds for entertainment expenses. Accordingly, it is worthwhile to provide evidence that, in addition to the employees, business partners etc. of the company are also invited to the Christmas dinner!

5. Vouchers:

Recently it has become increasingly common to give vouchers as Christmas gifts, e.g. for the purchase of sports equipment or for a weekend in a wellness hotel. The following applies in this respect:

VAT implications

By Ruling No. 21/E of 22 February 2011, the Italian Revenue Agency established that such vouchers cannot be regarded as securities representing goods or services. Consequently, the issue of the voucher does not bring forward the time at which the transaction is deemed to be carried out. Accordingly, both the sale of the vouchers and their transfer to employees or clients/suppliers fall outside the scope of VAT pursuant to Art. 2 para. 3 letter a) of DPR 633/1972. For vouchers issued as from 1 January 2019 (Legislative Decree 141/2018), however, the classification described above applies only to so-called multi-purpose vouchers, in the case of which it is not foreseeable at the time of issue which VAT rate will be applicable, because the voucher may be used, for example, to purchase goods subject to a VAT rate of 4%, 10% or 22% in a department store. If, by contrast, the future treatment for VAT purposes is already established at the time of issue (e.g. a voucher for a banquet – VAT 10%), the transaction is deemed to be carried out at the time of payment, and an invoice or a tax document must be issued immediately in respect of it. In the case of „multi-purpose“ vouchers, on the other hand, the transaction is carried out for VAT purposes only once the vouchers are actually redeemed.

We remain at your disposal for any further information.

Yours sincerely
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