

Drafted by the Tax Department

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Milan, 22 January 2015

Memorandum No. 3

This document should be classified as a studio note. Accordingly, its contents may not be used and/or interpreted as a legal opinion.

Subject: SPLIT PAYMENT

Dear Customer,

The 2015 Stability Law confirms important new rules concerning the **application of VAT for operations involving public organisations.**

In particular, it stipulates that for **operations conducted with effect from 1 January 2015**, supplies to the Public Administration authorities must be made using the “**split payment**” system. This means that the purchasing party undertaking the operation must charge VAT in the invoice, whilst **payment of tax is to be made by the purchasing or contracting party, dell'imposta a carico dell'acquirente o committente.**

It should be noted from the outset that, unlike the wording of the draft law, the system in question comes into effect from 1 January 2015 **without any need for EU authorisation**, notwithstanding the fact that in the event that this authorisation should not be given, it would be necessary to return to the ordinary means of applying VAT, with all the resulting problems that would arise.

Technically speaking, the **change in regulation falls under Article 17-ter of Presidential Decree no. 633/1972**, which states that for the **transfer of goods and with regard to services provided to the State** and its organisations, including those with legal status, to territorial public organisations and their consortiums, to the chambers of commerce, to the university institutes, local health authorities, hospital organisations, public organisations for hospitalisation and care of a mainly scientific nature, public assistance and charitable organisations and welfare organisations, **the tax is payable by the transferee or contracting party** (in its capacity as purchasing party), within **means and terms which will be established with the necessary ministerial decree.**

Broadly speaking, the mechanism in question will allow the seller or service provider to issue an invoice which bills the tax, and **the purchaser or contracting party makes payment of the taxable amount to the supplier, whilst the tax itself is paid directly to the Revenue Agency.**

By way of example, if a company should purchase goods with the intention of subsequently re-selling them to Public Administration authorities, the company may deduct the VAT paid on the purchase from the supplier, but it will not be obliged to pay (as it will not be collected by the same) the VAT due on its subsequent sale to the public authority: in actual fact, it will be the latter party that will pay the tax.

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In order to allow the system in question to be applied, the **invoice issued by the seller or provider** must state that the tax has to be paid by the purchaser or contracting party directly to the Revenue Agency (e.g. by indicating **“VAT to be paid by the buyer or contracting party in accordance with Article 17-ter of Presidential Decree no. 633/1972”**).

This system clearly makes it possible to ensure that the supplier cannot collect the tax and avoid paying it to the Revenue Agency, in the same way as applies with the “reverse charge” mechanism, although in the case of the latter, the party conducting the operation does not implement the refund of the tax.

Nonetheless, “split payment” **does not apply to payments owed for services that are liable for withholding tax**, for which taxes are to be applied using ordinary methods (e.g. professionals).

With regard to the effective date, as already noted, the original draft law stated that the new system would only come into effect subject to the EU Council issuing authorisation for the departure from Article 395 of the EU Directive, whilst the definitive wording states that implementation of the new system is immediate, with effect from **operations conducted from 1 January 2015**.

The actual means of paying the tax and the relevant terms shall, however, be defined with a relevant implementation decree, although it seems reasonable to deduce that a **special version of the F24 public bodies form** will be used.

In the event that the tax should not be paid, or that its payment is delayed, the fines stipulated under Article 13 of Legislative Decree no. 471/1997 shall be payable (30% of the tax not paid or paid late).

Lastly, it is advisable to note that the provisions regarding “split payment” as stipulated under Article 17-ter of Presidential Decree no. 633/1972 **do not apply to operations** for which the purchasing or contracting organisation, in its capacity as the purchasing party for tax purposes, must apply the **reverse charge regime** (such as, by way of example, intra-EU purchases of goods, or sub-contracting services provided in the construction sector).

In short, where the operation falls within the definition of a case to which the “reverse charge” regime applies, the latter prevails over the new “split payment” system.

The Studio remains at your disposal for any further clarifications required.

Yours sincerely,

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