

No response. 4

SUBJECT: Interpello Article 11, paragraph 1, lett. a) Law of 27 July 2000 n. 212 - imports - the deduction or refund of VAT paid to customs

As requested a ruling specified in the subject, and 'was exposed as follows

QUESTION

[ALPHA], tax representative in Italy of the Swiss company **[BETA]**, below instant, she is present, on behalf of the represented companies, as summarized below reported.

The next instant, a Swiss company, in carrying out its activities in wholesale trade of ferrous material, bought the goods marketed to foreign companies and exported them in Italy, making use of a tax representative Italian.

Specifically, the goods were sold and invoiced to the Italian tax representative, who was in charge of customs clearance and therefore the payment of VAT on importation. Subsequently, the tax representative sold and invoiced the goods to the end customer, as the goods were delivered directly by the instant conveyor.

By putting in place only transactions not subject to VAT, the tax representative systematically matured a tax credit, which regularly obtained the refund.

The petitioner, however, changed its *process* Sales of goods following the issuance of the Implementing Regulation (EU) of the European Commission of 28 April 2016, n. 670, which linked the release for free circulation in the European Union of certain iron and steel products (including those sold from the instant) exhibition of a surveillance document issued by the competent authority of a Member State, since the negotogli ' moment not have a permanent establishment in the EU.

Following the above denial, the applicant has therefore decided to sell the goods directly to the end customer or to an Italian company (as shown in the customs declaration), making use of a forwarding agent for customs clearance and all the VAT due ' import and always act with a conveyor for delivery. From the attached documents it shows that the "duties" (in this case the only tax) are then debited instantly.

Given the above, the instant demands to know what is the correct method of requesting a refund VAT, since the FAQ n. 40 (available at ["https://www.agenziaentrate.gov.it/portale/web/guest/schede/rimborsi/iva-rimborsi-uesoggetti-residenti](https://www.agenziaentrate.gov.it/portale/web/guest/schede/rimborsi/iva-rimborsi-uesoggetti-residenti) address) the Inland Revenue has clarified that " *Individuals who have a permanent establishment in Italy, direct identified, and those who use the tax representative can not reclaim VAT under Article 38 of Presidential Decree 633/1972 of bis2 but must be reclaimed by the conditions of Article 38 bis of the aforementioned decree* ".

INTERPRETATIVE proposed SOLUTION FROM THE TAXPAYER

In summary, the instant opinion that the only person entitled to claim the refund of VAT is the tax representative to that end, should:

- register the customs declaration in its books (although it is indicated as the recipient of goods a third party);

- file their VAT return asking for repayment of matured credit;
- when documents required by the tax authorities, to demonstrate the actual payment of VAT on importation and the subsequent charging of the tax itself, as well as the related payment, payable instant.

OPINION OF REVENUE AGENCY

Article 70 of the Presidential Decree of 26 October 1972, n. 633 (VAT Decree) provides that
" The tax relating to imports shall be charged, calculated and levied on each operation. "

According to Article 56 of the Decree of the President of the Republic on January 23 1973 n. 43 (TULD), *" Every customs operation must be preceded by a customs declaration ... "*. Such a declaration may be made by anyone present the goods to customs (cfr. Article 170 of Regulation (EU) October 9, 2013, n. 952).

The place of import upon accepting by the customs import declaration which shall also levy the appropriate tax (cfr. Resolution of 18 April 2008, no. 161 / E). The document takes on the Customs declaration value, attesting to the payment of dues or the fulfillment of the formalities required.

The debtor tax (customs debtor) is instead identified in Article 38 of TULD, that *" At customs tax payment they are obliged the owner of goods ... and, jointly, those on whose behalf the goods are imported or exported. "* In this regard, Article 77 of Regulation (EU) No. 952 of 2013 states that *" The debtor shall be the declarant. In case of indirect representation, it is also indebted to the person on whose behalf the customs declaration "is made.*

To locate the obligor, the provisions make-Union

reference either to the importer or owner of the goods but at the customs declarant and the mere availability of the goods.

The payment of VAT is therefore performed by the customs owner of the goods or the person through whom you are importing. Not infrequently, in fact, the import is performed through the intervention of one shipper.

In this regard, however, the Ministerial Resolution of 21 December 1990, n. 431354, provides some important qualifications.

According to that document the practice, the tax effects of the tax debtor is always the actual owner of the goods and not the intermediary acting as indirect representative obliged to pay customs duties on entry into the customs territory. This is because "*... Article. 19 of Presidential Decree October 26*

1972 n. 633, expressly provides that it is permitted as a deduction, the amount of tax relating to operations performed, the tax "Paid or payable"

by the taxpayer in relation to imported goods, where, using the phrase "taxpayer"

can only refer to the actual importer, ie the recipient of the goods, as reflected in foreign bill of sale, the only person entitled to exercise the right to deduct tax thereon. Therefore, the power of the actual owner of the goods to the exercise of the tax deductibility of VAT paid by the agent without representation, responsible for conducting the customs importation of goods, is legitimizing all times when his identity is verified through a subjective link between the customs document and the foreign invoice ".

In line with the above practices document, the Court of Cassation with the recent ordinance no. 2570 of 30 January 2019, made it clear that "*It is obligated to pay taxes and duties evaded even the actual owner of the goods, that the person in the name and on behalf of which the import operation has been performed, and not only the one who has physically presented goods to customs making ... its statement, given that premise*

the tax liability is the target of consumer goods within the customs territory, and that this debt is borne by those who have achieved (alone or with others) the placing of goods to the consumer. "

Given the above, the only person entitled to recover the VAT paid on import is the recipient of goods used in carrying out its activities, upon registration of the customs declaration in the register of purchases under Article 25 of the Decree VAT can deduct the tax paid.

So rebuilding the array, even if proposed from the instant, the tax effects of the tax payer is the Italian buyer, from which the shipper would have to recover the VAT paid to customs, provided that the sale takes place directly between the 'foreign entity moment and Italian companies rather than by means of a tax representative, which first sold, properly acquitted VAT customs and asking for and obtained a refund.

THE HEAD OF DIVISION ADDED

(Digitally signed)