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VAT for non-deductible intragroup services if costs are not proven



The Court of Cassation refers to a concept of "quantitative" and "utilitarian" inherence, borrowed from the discipline of direct taxes

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By Sara BERNARDI

The VAT paid in reverse charge by the taxable person residing on the costs for intragroup services rendered by foreign subjects is non-deductible, if the **inherence** of the same is not proven .

Although it is not disputed the regular carrying out of the reverse charge, and the neutrality of the operations, "the lack of the substantive assumptions, relative to the proof

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deductible".

The Cassation reaches these conclusions in sentence no. 3599 of February 13, 2020, whose decision - confirming that of the second-care judge - is based on the consideration that the burden of proof regarding costs for services provided by EU entities belonging to the same group has not been sufficiently fulfilled.

The question concerns the expenses incurred for services rendered by non-residents within multinational groups, at the center of the control activity of the auditing bodies which, by moving the disputes on the congruity of the same (with reference to the rules on transfer pricing, referred to ' art. 110 paragraph 7 of Income Tax Code), make a descent on the an union and the quantum of the same, disconoscendone the deduction for lack of inherent requirement.

In the present case, the Court denies the deductibility of the costs, and the deductibility of the VAT paid at the same time, considering that the documentation produced is not sufficient proof of the adherence of said negative components of income to the economic activity.

The case confirms, once again, how the union on costs in the field of direct taxation becomes, in the assessment phase - often with the approval of the legitimacy judges -

> Always related to interest expense incurred by joint stock companies

> From 2 March letters of intent in the supplier's tax drawer

> Non-retroactive corrupt sweeper because it changes the application scope of the sentence

> Revision is not just a cost

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In the ruling in comment, the legitimacy judge denies the right to deduct the VAT paid in reverse charge on intra-group expenses, referring to a concept of "quantitative" and "utilitarian" inherence (contra, on the purely "qualitative" character that it must assume the judgment on *inherence*, see Cass. nos. [18940/2018](#) and [33574/2018](#)), borrowed from the direct tax discipline.

The Court denies the deductibility of the VAT paid on the expenses for intra-group services considering the proof of the "effective utility" drawn from the same not having been fulfilled, despite the reference to the principle of actual consideration (pursuant to [art. 13](#), first paragraph of Presidential Decree 633/72 and [art. 73](#) of Directive 112/2006 / EC), key in the VAT system (Cass. n. [2240/2018](#)), based on neutrality and on different assumptions from those of direct taxation (the EU Court of Justice because [C- 132/16](#)).

The deduction of the tax paid on the expenses for intragroup services is denied due to the lack of proof of the effective utility and economic advantage achieved by the services rendered and the non-fulfillment of the evidentiary burden in terms of costs, the recall of which is perhaps improper in the VAT area, where [art. 19](#), paragraph 1 of Presidential Decree 633/72 (in force

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purchased in the course of the business, art or profession, establishing that the right to deduct is denied where it arises in relation to the purchase or import of goods and services relating to transactions exempt from or in any case not subject to tax.

> March 2019
(72)

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Thus, in the wake of previous rulings (Cass. No. [6972/2015](#)), while acknowledging - at least on the point sanctions pursuant to [art. 1](#) , paragraph 2-ter of Legislative Decree 471/97 -, which the transfer pricing regulation would not be relevant in the present case because it is not applicable in the matter of VAT, the Court of Cassation denies the deductibility of the VAT paid on costs considered not inherent, on the basis of a union on the "fairness" "And" utility "of the same, placing itself in stark contrast to the recent AIDC Standard of Conduct no. [205/2019](#) .

> January 2019
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2018 (60)

The latter, in fact, states that, even where the contestation of expenses made in the field of income taxes may find entry into the VAT area, the tax paid with the reverse charge must be recognized as deductible and the unions on the deductibility of negative components of income cannot affect the right of deduction, the exercise of which remains bound by the principle of neutrality.

> August 2018
(6)

> July 2018 (55)

> June 2018 (4)

The deductibility of the VAT paid can be questioned only if

> May 2018

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respect to the business activity "takes place in a context in which its own size makes it plausible there is a defrauding fumus on the behavior of the taxable person ".

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> April 2018

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