

Answer # 133

OBJECT: Interpello Article 11, paragraph 1, letter), law 27 July 2000, n.212 -
invoice issued against the VAT Group - incorrect indication of the VAT number

With the instance of question specified in the subject, the following was presented

QUESTION

[...] (instant below), owner of a sole proprietorship, reports what is briefly reported below.

The applicant issued an invoice in November 2019 against [...] (hereinafter the client) indicating the VAT number of the same.

Subsequently, the client issued a self-invoice to correct the invoice received from the applicant, indicating the VAT number of the VAT group to which it belongs, without however informing the applicant that, only in January 2020, he acquired a copy by accessing his drawer tax of invoices and fees.

The client believes that it has operated in compliance with the indications contained in resolution no. 72 / E of 1 August 2019, and that the applicant must not record the aforementioned self-invoice in their VAT books.

Given the above, the petitioner requests to be able to issue a decrease note, pursuant to article 26 of the decree of the President of the Republic 26

October 1972, n. 633 (hereinafter VAT decree), in order to recover the VAT originally charged on the invoice.

INTERPRETATIVE SOLUTION PROPOSED BY THE TAXPAYER

In summary, the applicant believes that he can issue a variation note dated 31 December 2019, in order to exercise the deduction of the VAT charged on the invoice by the date of submission of the VAT return for 2019, the year in which it occurred the prerequisite for making the decrease.

OPINION OF THE REVENUE AGENCY

Article 21, paragraph 2, letter f) of the VAT decree establishes that the invoice must contain, among other indications, the "*VAT number of the transferee or customer or, in the case of a taxable person established in another Member State of the European Union, the VAT identification number assigned by the Member State of establishment; in the event that the transferee or client resident or domiciled in the territory of the State does not act in the exercise of business, art or profession, tax code*". Therefore, the correct indication of the customer's VAT number is one of the requirements required for the invoice to be regular.

Article 70- d of the same VAT decree provides in paragraphs 3 and 4 that
"3. The supplies of goods and services rendered to a person participating in a VAT group by a person who is not part of it are considered to have been made to the VAT group".

4. Obligations and rights deriving from the application of the rules on Value added tax are charged and paid to the VAT group respectively. "

Consequently, article 3, paragraph 2, of the decree of the Minister of Economy

and finance 6 April 2018, provides that " *For the purpose of invoicing the sales of goods and services rendered to the VAT Group, the Group representative or participants communicate the Group's VAT number and the tax code of the individual purchaser to the suppliers. Upon receipt of the invoice, the same persons verify the indication of the tax code and proceed with its insertion if missing* ".

Therefore, when a person belonging to a VAT group receives an invoice with the incorrect indication of his VAT number instead of that of the VAT group,
"for the purposes of its registration and the exercise of the right to deduct the relative VAT, it must necessarily be activated for its regularization.

(...) in the manner indicated in article 6, paragraph 8, letter b) of Legislative Decree no. 471 of 18 December 1997 "(cfr. resolution no. 72 / E of 1st August 2019).

It should be noted, however, that the regularization described above assumes that the client / transferee has previously communicated, where possible, to the lender / transferor the error committed, so that the latter can correct it by issuing a variation note pursuant to Article 26 of the VAT decree reversing the incorrect invoice and issuing a new correct invoice.

Only where the lender / transferor does not proceed in this way, the client / transferee - in order not to incur penalties - must proceed according to the indications referred to in article 6, paragraph 8 of Legislative Decree no. 471 of 1997, according to which " *The transferee or the client who, in the exercise of companies, arts or professions, has purchased goods or services without an invoice having been issued in accordance with the law or with the issue of an irregular invoice by the other contractor, is punished, without prejudice to the responsibility of the transferor or commission agent, with an administrative sanction equal to one hundred percent of the tax, with a minimum of € 250, provided that it does not regularize the operation in the following ways:*

a) if you have not received the invoice, within four months from the date of execution

of the transaction, by submitting to the competent office against him, upon payment of the tax, within the thirtieth day following, a document in two copies showing the indications required by article 21 of the decree of the President of the Republic 26 October 1972, n. 633, relating to the invoicing of transactions;

b) if you have received an irregular invoice, by submitting to the office indicated in the letter a), within the thirtieth day following that of its registration, a two-fold supplementary document bearing the same indications, subject to payment of the higher tax that may be due ".

The regularization of the electronic invoices received through the interchange system (ES) must be carried out according to the indications provided by the provision of the Director of the Revenue Agency of 30 April 2018, which at point 6.4 provides that "*For the regularization of the transaction according to letters a) and b) referred to in article 6, paragraph 8, of Legislative Decree 18 December 1997, no. 471, the transferee / client transmits the self-invoice to the ES by filling in the "TipoDocumento" field with a conventional code, indicated in the technical specifications of this provision, in the electronic invoice file "(TD20 Self-billing) " and the personal data sections of the transferor / provider and the transferee / client respectively with the data of the supplier and their own data. The transmission of the self-invoice to the ES replaces the obligation, pursuant to article 6, paragraph 8 letter a), of the Legislative Decree of 18 December 1997, n. 471, of presentation of the self-invoice in analog format to the Office of the territorially competent Revenue Agency ".*

In the proposed case, therefore, since the customer has already regularized by self-invoice the incorrect indication on the invoice of his VAT number instead of that of the VAT group, without previously immediately communicating the error committed, the latter no longer needs to issue a variation note as per article 26 of Presidential Decree 633 of 1972 to correct, in turn, the same error.

In this case, in fact, it is sufficient for the applicant to record on the VAT register

sales that the regularization of the invoice in question occurred through the issuing of self-invoice by the customer, a document that must be kept in the documents without being also recorded in the sales VAT register.

[...]

THE HEAD OF DIVISION

(digitally signed)