Taxpayers Division

Answer # 160

OBJECT: Interpello article 11, paragraph 1, lett. a), Law of 27 July 2000, no. 212 - VAT refund pursuant to article 30, second paragraph, lett. e), of the decree of the President of the Republic 26 October 1972, n. 633

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

QUESTION

[ALPHA], in the following instant, in explaining what is briefly reported below, he points out:

- be the secondary office of a company incorporated under [...] law with registered office in [...] (hereinafter the parent company), belonging to the group;

- perform exclusively support functions for the commercial activity carried out by the parent company, consisting in the local development of the *marketing* and in promotion;

- receive from the parent company, for the performance of the aforementioned activities, a remuneration determined on the basis of a correct transfer pricing policy, according to the so-called *arm's lenght;*

- support the typical costs for the maintenance of the operating structure (such as, for example, office rental fees, personnel costs, costs for tax and accounting consultancy).

The applicant also notes that:

- the parent company purchases products from a company belonging to the [...] group and then resells them to mainly Italian customers and, to a residual extent, established in other EU Member States;

- the goods, imported for free circulation from Italy [...] with the support of a third-party logistics operator, are temporarily introduced into a warehouse of said entity, which does not assume the status of VAT warehouse;

- the parent company subsequently transfers the goods, delivering them from the aforementioned warehouse to the transferees / taxable persons established in Italy, without the applicant intervening in any way in the process of physical movement and storage of the goods or acquires at any time the physical availability or the power to dispose of it. From the same warehouse, the goods are also sent to assigns / taxable persons established in another EU Member State pursuant to article 41 of the decree-law of 30 August 1993, no. 331, converted, with modifications, by the law 29 October 1993, n. 427, in the same way as for "domestic" sales.

Given that:

- the services rendered instantly by the parent company are outside the scope of VAT;

- "domestic" transfers of goods imported into Italy are subject to the reverse charge regime pursuant to article 17, paragraph 2, of the decree of the President of the Republic of 26 October 1972, no. 633 (hereinafter the VAT decree). Consequently, the VAT due in Italy is paid by the Italian transferees;

- the parent company must necessarily operate through the VAT number assigned instantly, as a permanent Italian organization, for the purpose of paying the tax due when importing the goods into Italy, as well as for the obligations related to the intra-community supplies of goods departing from Italy. Consequently, the supplies referred to in article 41 of Legislative Decree 331 of 1993, as well as the imports of goods in Italy pursuant to article 67 of the VAT decree with relative

payment of customs VAT, are necessarily operated by the applicant, on which the related declarative obligations fall;

the moment points out that he presented the [...] the 2019 VAT return for the 2018 tax period, subsequently integrated in order to communicate the volume of the EU transfer operations, referable to the activity of the parent company, for which a late invoice was issued. In particular, the applicant represents that in the 2019 VAT return:

- the first form (showing the transactions referring to the same moment) shows a tax surplus deriving from "domestic" purchases subject to VAT equal to [...] euro and consisting of the sum of [...] euro (as tax credit resulting from the same 2019 VAT return) and [...] euro (as a tax credit resulting from the 2018 VAT return, net of offsetting uses);

- the second form (showing the operations referable to the parent company) highlights a tax surplus of [...] euro;

- the total tax surplus deriving from the aforesaid forms (and equal to [...] euro) was indicated as tax credit to be deducted or offset against the following year.

In light of the above, the petitioner asks to know if it is possible (and with what modalities) to recover the VAT on credit relating to the operations referable to the parent company. In particular, he asks to know:

- what is the prerequisite for being able to request a refund of the aforementioned credit. The interpretative doubt originates from the fact that the VAT credit emerging from the declaration for the 2019 tax period represents the total tax surplus deriving from the forms relating to the same moment and to the parent company;

- the correct way of completing part VX of the VAT return.

INTERPRETATIVE SOLUTION PROPOSED BY THE TAXPAYER

In summary, the petitioner is of the opinion that, for import operations exclusively referable to the parent company, the latter should be considered as "not established" in the territory of the State and, therefore, could have access to the refund of VAT pursuant to of article 30, second paragraph, lett. e) of the VAT decree. And this even if the annual return is presented by the applicant, a taxable person established for VAT purposes in Italy.

Consequently, the applicant intends to request the refund of the tax surplus with the 2020 VAT return relating to the 2019 tax period, indicating:

- in line VX4, field 1 (*Amount to be refunded),* also the amount of the tax credit emerging from the 2019 VAT return relating to the 2018 tax period;

- in part VX4, field 3 (*Refund reason)* the code "6", relating to the assumption referred to in lett. e) of the second paragraph of article 30 of the VAT decree, as "absorbent", by numerical relevance, that referred to in lett. b) of the same article (and which constitutes a prerequisite for the right to reimbursement of the VAT credit in relation to "domestic" purchases made by the same applicant).

OPINION OF THE REVENUE AGENCY

The second paragraph of Article 30 of the VAT decree contains a mandatory list of the conditions that allow the request for reimbursement of the VAT credit emerging from the annual return (to which must be added the one referred to in Article 34, paragraph 9, of the same decree), beyond which the same must necessarily be deducted / offset in the following tax period. In particular, the assumption referred to in lett. e) of the aforementioned article 30 operates if the taxpayer is « *under the conditions set out in the third paragraph of article 17* »Of the same VAT decree. This last article refers, in turn, to « *non-resident subjects and without permanent establishment* »That, to fulfill the obligations or

exercise the rights deriving from the application of the VAT rules, they identified themselves directly (pursuant to article 35- *ter* of the VAT decree) or, alternatively, have appointed a tax representative residing in the territory of the State, in the forms provided for by article 1, paragraph 4, of the decree of the President of the Republic 10 November 1997, n. 441. By express regulatory provision, therefore, the permanent organization is barred from accessing the refund of the VAT credit on the basis of the assumption referred to in lett. e) of the second paragraph of article 30 of the VAT decree because it is reserved exclusively for those subjects not established for which there is no connection criterion with the territory of the State in which they have accrued the credit. This, however, can also occur if an unspecified person has a secondary office that does not participate in the implementation of the operations carried out by the same,

2011). However, a different conclusion must be reached if, as in the present case, the permanent organization pays VAT at customs for imports of goods into Italy pursuant to article 67 of the VAT decree. This activity, in fact, represents a necessary condition for the completion of the operations carried out by the parent company and, therefore, cannot be considered irrelevant for the purposes of carrying them out. Consequently, the petitioner, like the other established taxable persons, cannot avail itself of the assumption referred to in article 30, second paragraph, lett. e) of the VAT decree to request the refund of the deductible surplus emerging from the annual return.

As for the VX picture, the same " *it contains the data relating to the VAT to be paid or the VAT on credit and must be completed only in form no. 01 "(* so the instuctions to the VAT 2020 model consult tabi li on the of the writing https://www.agenziaentrate.gov.it/portale/documents/20143/2266032/IVA_istr_2020.p df / 28449a24-cf34-d12d- 5e13-7e8481eacc5a). Therefore, VAT credit, as emerging overall from the annual filing submitted by the applicant, can

be reported by the latter as a deduction / compensation the following year or can be requested for reimbursement if the conditions referred to in the second paragraph of Article 30 are met (with the exclusion, it is reiterated, of that referred to in letter e)) , or 34, paragraph 9, of the VAT decree, to be verified at the same time.

[...]

THE HEAD OF DIVISION

(digitally signed)