

**Answer n. 373**

**OBJECT:** Invoicing to VAT Group - Incorrect VAT number indication -

With the request for ruling specified in the subject, the following has been exposed

**QUESTION**

The instant company, ALFA SpA, is the representative of the homonymous VAT Group " *ALPHA* " (identified by VAT number XXXXX) to which BETA SpA belongs, a company belonging to the same group of companies operating in the insurance sector.

In particular, the applicant company and BETA SpA, being taxable persons for which the financial, economic and organizational constraints referred to in article 70- *ter* of the DPR n. 633 of 1972, exercised the option, pursuant to article 70- *quater* of the aforementioned Presidential Decree no. 633, for the establishment of the VAT Group with effect from 1 January 2019.

The subjects belonging to the VAT Group " *ALPHA* ", carrying out (insurance) transactions exempt from VAT, pursuant to article 10, paragraph 1, no. 2) of Presidential Decree no. 633 of 1972, requested to be exempted, as provided for by article 36- *BIS* of the aforementioned Presidential Decree no. 633, from the obligations of invoicing and registration of exempt operations carried out by the same, without prejudice to the obligation to issue an invoice upon specific customer request.

The exercise of the option to dispense with the obligations, as per the aforementioned article 36- *BIS*, implies, as highlighted by the applicant company itself, the preclusion of the exercise of the right to deduct both the VAT charged as compensation on purchases made by participants in the VAT Group " *ALPHA*" and of the tax (possibly) exposed in the self-invoices issued by the latter subject.

Having said this, ALFA SpA points out that the participants in the homonymous VAT Group, in compliance with the provisions of paragraph 2, of article 3 of the Ministerial Decree of 6 April 2018, communicated the VAT number of the VAT Group to their suppliers " *ALPHA*" and the tax code of the individual purchaser belonging to the same Group.

However, often suppliers in issuing invoices, in addition to indicating the tax code of the individual purchaser, incorrectly enter the VAT number of the latter subject instead of the VAT number that identifies the VAT Group " *ALPHA*" to which the client himself belongs.

In this regard, the applicant company notes that the tax authorities, with resolution no. 72 / E dated 1 August 2019, provided information on the correct operating procedures to be observed in order to regularize the invoices, issued by suppliers, with the incorrect indication of the VAT number of the customer participating in the VAT Group.

Specifically, with the document of practice cited last, it was clarified that the invoices issued with the incorrect indication of the VAT number of the individual buyer in place of that of the VAT Group must be regularized through the procedure described in article 6, paragraph 8, of the legislative decree n. 471 of 1997.

Given the above, the company ALFA SpA, in the capacity of representative of the homonymous VAT Group " *ALPHA*", asks to know the correct procedure to be adopted in order to regularize the invoices issued with the incorrect indication of the VAT number of the client (instead of that of the VAT Group) in the event that the VAT Group has opted for the dispensation of the obligations referred to Article 36- *BIS* of the DPR n. 633 of 1972.

## **INTERPRETATIVE SOLUTION PROSPECTED BY THE TAXPAYER**

The applicant company believes that, in order to regularize the invoice bearing the incorrect indication of the customer's VAT number received by the supplier, it is necessary, in line with the instructions provided with resolution no. 72 / E of 2019, make use of the procedure governed by article 6, paragraph 8, letter b) of Legislative Decree n. 471 of 1997.

Specifically, the company ALFA SpA is of the opinion that the regularization of the inaccurate invoice recorded must only involve the issue of an additional document to be transmitted via SDI, without it being necessary to register it in its accounts.

## **OPINION OF THE REVENUE AGENCY**

As clarified with circular no. 19 / E of 2018, following the establishment of the VAT Group, the companies adhering to the Group lose their autonomous subjectivity for VAT purposes and establish a new taxable person with its own VAT number and its own independent registration at VIES.

The VAT number of the Group - to which each participant is associated - must be reported in the declarations and in any other deed or communication relating to the application of the value added tax.

In consideration of the unitary subjectivity of the VAT Group, the sales of goods and the provision of services carried out or received by one of the subjects participating in the VAT Group, having as a counterpart a subject not participating in the same Group, are therefore considered carried out (or acquired ) by the Group itself (in this sense circular no. 19 / E of 2018 last cited).

In this regard, it should be noted that Article 3, paragraph 2, of the decree of the Ministry of Economy and Finance of 6 April 2018 - issued in implementation of

regulations on the VAT Group - establishes that "*for the purposes of invoicing the sales of goods and services rendered to the VAT Group, the representative of the Group or the participants shall notify the suppliers of the Group's VAT number and the tax code of the individual purchaser*".

Consequently, the invoices received by the VAT Group must show - in the transferee / customer section - the VAT number of the Group and the tax code of the individual participant in the Group to which the transaction refers (in this sense FAQ no. 69 published on 19 July 2019).

The correct indication of the transferee or client's VAT number is, in fact, among the essential requirements of the invoice identified by article 21 of Presidential Decree no. 633 of 1972.

Having said that, with resolution no. 72 / E of 2019 and, more recently, with the response to ruling no. 133 published on May 18, 2020 it has been clarified that in the event that the transferee or customer belonging to the VAT Group receives a purchase invoice with the incorrect indication of his VAT number in place of the one that identifies the VAT Group, "*for the purposes of its registration and the exercise of the right to deduct the relative VAT, it must necessarily take action for its regularization ... through the procedure indicated in article 6, paragraph 8, letter b) of legislative decree no. 471 of 18 December 1997*".

As already clarified with the aforementioned answer no. 133, to which reference is made, the regularization described above presupposes that the customer / transferee has previously communicated, where possible, to the lender / transferor the error committed, so that the latter can proceed to its correction by issuing a variation note pursuant to article 26 of the VAT decree to cancel the incorrect invoice and issue a new correct invoice.

Only where the lender / transferor does not proceed in this sense, the purchaser / transferee - in order not to incur sanctions - 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 businesses, arts or professions, has purchased goods or services (...) with the issuance 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 the transaction is not regularized in the following ways ...:*

*b) if you have received an irregular invoice, presenting it to the office indicated in letter a), within the thirtieth day following that of its registration, a supplementary document in duplicate bearing the same information, subject to payment of any additional tax due "*

The following paragraph 9 of the aforementioned article 6 also provides that " *if the regularization is carried out, a copy of the document, with the attestation of the regularization and payment, is returned by the office to the taxpayer who must register it pursuant to article 25 of the decree of the President of the Republic October 26, 1972, n. 633.*

With the introduction of electronic invoicing, the regularization of electronic invoices received through the interchange system (SDI) must be performed according to the instructions provided by the provision of the Director of the Revenue Agency of 30 April 2018, which in 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 no. 471, the transferee / client sends the self-invoice to the ES by filling in the "TipoDocumento" field in the electronic invoice file with a conventional code, reported in the technical specifications of this provision "(TD20 Self-invoice)" and the personal data sections of the transferor / provider and of the transferee / customer respectively with the supplier's data and their own data. The transmission of the self-invoice to the ES replaces the obligation referred to in Article 6, paragraph 8 letter a), of Legislative Decree no.*

*471, for the presentation of the self-invoice in analogue format to the Agency Office*

*of territorially competent revenue "*.

Given the above, on the basis of the above reconstruction, the applicant company, in line with the indications provided in answer no. 133 of 2020, must report the error committed to the transferor or lender, in order for the latter to issue a note of variation in decrease, pursuant to article 26, of Presidential Decree no. 633 of 1972, reversing the invoice bearing the incorrect VAT number of the purchaser, in place of that of the VAT Group, as well as issuing a new correct invoice.

Only in the event of inertia on the part of the latter, the applicant company, in order not to incur sanctions, will have to make use of the regularization procedure provided for by article 6, paragraph 8, lett. b) of the Legislative Decree n. 471 of 1997.

If the original invoice has already been registered, since it is the correction of a formal element, it is sufficient for the applicant to note on the purchase VAT register - in correspondence with the incorrect purchase invoice - that the regularization of the invoice took place by issuing the self-invoice ( details of the document), keeping the same in the records. The regularized error does not generate a "higher tax" to be paid. The same note must also be made by the supplier to give evidence that the "formal" error has been corrected by the customer.

**THE CENTRAL DIRECTOR**

**(digitally signed)**