

**Answer n. 390**

**OBJECT:** Ruling Article 11, paragraph 1, lett. a), law no. 212.  
VAT rate applicable to renovation and expansion of a property. 127-quaterdecies),  
Table A, Part III, Presidential Decree no. 633/72

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

**QUESTION**

The research body instant X points out that it intends to carry out substantial restructuring and recovery works on a property, located in the port area, in order to create a suitable site for carrying out its institutional research activity.

This intervention relates to the restructuring and partial expansion of the future building of the institution and the construction of a technologically advanced building through the functional and plant adaptation, energy requalification, safety from the seismic point of view and in the compliance with legislation on overcoming architectural barriers.

The project involves the renovation of the existing building and an extension equal to a net useful area of approximately (... sqm), the latter mainly intended for teaching activities, workshops, national conferences and

international.

Both the renovation and the expansion have been designed to facilitate hospitality and transit, as well as the technical-scientific staff, also of the participants in the didactic and training activities of the headquarters, in order to favor the use of spaces and infrastructures, minimizing any interference between teaching and research activities, organized in separate environments but at the same time communicating with each other.

The petitioner reports that other subjects are involved in the project and that the same participates with didactic and training actions, with the final aim of training people and using and managing public spaces, aimed at promoting scientific culture in the territory.

The scientific activities carried out by the researchers of the moment are oriented towards the marine ecosystem, with particular reference to the biology of the sea, professional fishing and the state of conservation of fishery resources and the assessment of the state of related ecosystems.

Furthermore, the Instant Body carries out the following additional activities: training and teaching, school-work alternation, scientific tutoring for university and foreign students on the occasion of internships and degree theses also under a Framework Agreement with the 'University Y.

Having said this, the petitioner asks for clarification regarding the VAT rate applicable to the restructuring and expansion interventions to be carried out on the aforementioned property.

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

The petitioner observes that article 3, paragraph 13, of legislative decree 90 of 1990, converted with amendments, by law no. 165 of 1990, provides that "*the services provided in the ports (...) also include those of reconstruction, expansion, modernization, renovation and redevelopment of existing systems, even if these works are located within the aforementioned places, in a location other than*

*previous one*".

This provision clarifies the scope of application of the regulations contained in the article 9, paragraph 1, n. 6 of Presidential Decree 26 October 1972, n. 633, which provides for non-taxability for VAT purposes for "*services provided in ports, autoports, airports and border railway stations that directly reflect the operation and maintenance of the systems or the movement of goods or means of transport, as well as those rendered by the shipping agents*".

The petitioner invokes the application of the aforementioned provision on the basis of some clarifications provided in a note from the Ministry of Finance, prot. 470124 of 10 November 1990, considering that the restoration and renovation of the building is attributable to the "*state building works*" mentioned in this note among the interventions that can benefit from non-taxability for VAT purposes.

In the alternative, where this discipline could not be applied to the present case, the applicant deems the subsidized regime applicable, with the application of the VAT rate of 10%, provided for by number 127- *quaterdecies*) of Table A, part III, of Presidential Decree No. 633 of 1972, both with reference to the part relating to the building renovation works, and in relation to the extension works, due to the fact that these works will make it possible to allocate the building both the research activity and the complementary didactic-training activity.

#### **OPINION OF THE REVENUE AGENCY**

As a preliminary point, it should be noted that it is beyond the competence of the undersigned to express an opinion on the technical qualification of the interventions and that the identification of the applicable VAT rate implies a factual verification of the same which cannot be exercised during the ruling.

Based on n. 127- *quaterdecies*) of Table A part III of Presidential Decree no. 633 of 1972, the rate of 10 per cent applies, inter alia, to "*provision of services*

*dependent on tender contracts relating (...) to the implementation of the recovery interventions referred to in Article 31 of the Law of 5 August 1978, n. 457, excluding those referred to in letters a) and b) of the first paragraph of the same article ".*

The aforementioned article 31, letters c), d) and e), of law no. 457 of 1978, to which the aforementioned Table refers, was transfused in article 3 of the Presidential Decree of 6 June 2001, n. 380 (containing the Consolidated Law on building laws and regulations) and, therefore, currently represents the reference legislation for identifying the various types of subsidized interventions.

In particular, in analogy to the previous provision, the recovery interventions that can fall within the application of the reduced rate of 10 percent are those "*of restoration and conservative rehabilitation*" [letter c)], "*of building renovation*" [letter d)] and "*urban restructuring*" [letter f)] of the aforementioned article

3. In essence, the 10 percent rate applies to the provision of services relating to procurement contracts relating to restoration and conservative rehabilitation and building and urban restructuring, excluding interventions relating to ordinary maintenance and extraordinary.

The same Presidential Decree 380 of 2001, in defining the building interventions, establishes that for:

- "*restoration and conservative rehabilitation*" we mean the intervention aimed at preserving the building organism and ensuring its functionality through a systematic set of works that, in compliance with the typological, formal and structural elements of the organism itself, allow its intended uses compatible with them. These interventions include the consolidation, restoration and renewal of the building's constituent elements, the insertion of accessory elements and systems required by the needs of use, the elimination of elements extraneous to the building organism;

- "*building renovation*" the intervention aimed at transforming the building organisms through a systematic set of works that can lead to a building organism in whole or in part different from the previous one. This intervention includes the restoration or the

replacement of some constituent elements of the building, the elimination, modification and insertion of new elements and systems;

- "*urban restructuring*" the intervention aimed at replacing the existing urban-building fabric with a different one, through a systematic set of building interventions, also with the modification of lots, blocks and the road network.

They therefore fall within the scope of application of the provision contained in no. 127-*quaterdecies*) of Table A part III of Presidential Decree 633 of 1972 the restoration and conservative rehabilitation interventions carried out on buildings or building complexes as well as those of building and urban planning restructuring envisaged on the basis of the aforementioned legislation.

In the case in question, the applicant entity intends to proceed with a restructuring and expansion intervention on an existing property and, therefore, if, based on specific administrative documentation issued by the competent bodies, it appears that the interventions in question are attributable to the aforementioned types referred to in the aforementioned article 3 of Presidential Decree 380 of 2001, the reduced rate referred to in the aforementioned n. 127-*quaterdecies*) of Table A part III of Presidential Decree 633 of 1972.

For the sake of completeness, it should be noted that, on the other hand, the VAT regime referred to in nos. 127-*quinquies*) and 127-*septies*) d in Table A part III of Presidential Decree 633 of 1972, envisaged only for the construction of "new" buildings, nor that referred to in article 9, first paragraph, no. 6) of the Presidential Decree of 26 October 1972, 633, applicable to "*services provided in ports, autoports, airports and border railway stations that directly reflect the operation and maintenance of the systems or the movement of goods or means of transport*".

In this regard, it is noted that article 3, paragraph 13, of the decree law of 27 April 1990 (converted, with amendments, by law of 26 June 1990, no. 165), provides that "*among the services provided in the ports, directly reflecting the operation and maintenance of the plants or the movement of goods or means of transport, referred to in article 9 no. 6), of the decree of the President of the Republic 26 October 1972, n. 633, are intended*

*including those of refurbishment, completion, expansion, modernization, restructuring and requalification of existing plants even if these works are located, within the aforementioned places, in a different location from the previous one; the services relating to the movement of people and assistance to means of transport and those referred to in number 5) of the same article, regardless of the definitive customs destination of the goods, are also understood as included, provided they are rendered within the places as described above .*

For the purposes of non-taxability, it is required, on the one hand, that the services are rendered in a specific place (port, airport, etc.) and, on the other hand, that they are directly related to the operation and maintenance of the plants or the activity of moving goods or people, as well as assistance to means of transport, which is ordinarily carried out in the same place (see resolutions n.176 / E of 23 November 2000, and n. 253 / E of 14 September 2007 ).

In this sense, the services in question must be presented as structural interventions to be carried out on existing and directly functional plants to ensure and guarantee their operation, maintenance, refurbishment, completion, modernization, expansion, renovation and retraining.

As specified in the aforementioned resolution no. 176 / E of 2000, essentially, on the one hand, purely technical services aimed at guaranteeing the functionality of the plants, on the other hand, essential services for the rapid movement of goods or means of transport, consistently with the provision from the aforementioned article 9, paragraph 1, no. 6) of Presidential Decree 633 of 1972.

In this regard, the Court of Cassation, with sentence 12 December 2014, n. 26183, specified that the legislator with the rule in question has " *defined the operation of the precept in relation to: a) the objective criterion of the provision of the service, identified according to the nature described (reconstruction, expansion, modernization, renovation and redevelopment works) and the purpose (works directly reflecting the operation and maintenance of installations); b) to*

*identification of the "locus" - assimilated, through "fictio juris", to the non-state territory*

*- in which these services are performed, and which is identified by reference to an exhaustive list of "plants" relating to sectors considered strategic (ports, autoports, airports and railway stations, borders) "*

In the case in question, in relation to the interventions that the interpellant intends to carry out, there is no functional connection with the port activity, therefore it cannot be said that they are suitable for guaranteeing the functionality of the systems or that they integrate services essential to ensure the rapid movement of goods or means of transport.

Therefore, it does not appear sufficient for the purposes of attributability to the aforementioned discipline referred to in article 9, paragraph 1, no. 6) of Presidential Decree 633 of 1972, the fact that the building on which the restructuring and expansion interventions will take place is located in the port area, in consideration of the different purposes that the applicant intends to pursue by carrying out this intervention.

In fact, the interpellant declares to carry out scientific and didactic-training research activities linked to the reality of the port area and the planned restructuring and expansion interventions are aimed at facilitating the carrying out of these activities, in line with the provisions of the Framework Convention. stipulated between Entity X and University Y which provides that "*In order to better achieve their respective institutional purposes, (X and Y) recognize the common interest in maintaining and developing forms of collaboration in partnership for carrying out research, technological development and innovation activities and in the context of teaching activities. and training, as well as for the provision of services to support research activities "*

**THE CENTRAL DIRECTOR**

**(digitally signed)**