Taxpayers Division

Central Management Small and medium-sized enterprises

Answer n. 56

OBJECT: VAT - Article 124 Relaunch Decree - Accessories

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

QUESTION

ALFA Srl (hereinafter, "ALFA", "Company" or "Instant") markets wholesale medical devices, equipment and medical products of high quality, innovation and technology, including oximeters and pulse oximeters.

Circular no. 26 / E of 15 October 2020 confirmed the inclusion of these assets among the " *diagnostic instrumentation for Covid-19 "* and, therefore, the applicability of the regulations referred to in article 124 of law decree no. 34 of 2020.

In addition to these goods, the Company markets dedicated consumables necessary for the use of the goods themselves. In particular, these are:

- disposable probe cover for tympanic thermometers: disposable consumable dedicated to the use of the thermometer that allows to measure the body temperature on the patient avoiding any possibility of contamination;

- sensors for cerebral and somatic oximetry: disposable sensors intended for the monitoring of regional oxygen saturation that avoid any possibility of contamination;

- finger sensors for reusable and disposable pulse oximeters: consumable material necessary for the detection of oxygen parameters by pulse oximeter.

The Taxpayer asks whether even with regard to the goods listed above, the VAT exemption established by the regulations in question is applied.

INTERPRETATIVE SOLUTION PROSPECTED BY THE TAXPAYER

The Applicant believes that the assets described above are to be considered accessories to the sale of thermometers and Covid-19 diagnostic equipment (which benefit from the VAT exemption) and, therefore, recalling Circular no. 26/2020, that the same VAT regime is also applicable to the goods indicated in this ruling.

OPINION OF THE REVENUE AGENCY

Article 124 of the decree law 19 May 2020, n. 34 (hereinafter, the "Relaunch Decree"), converted with amendments by law no. 77, introduced a facilitated VAT regulation in relation to certain goods, considered necessary for the containment and management of the epidemiological emergency from Covid-
19, which consists, up to 31 December 2020, in a particular exemption regime with the right of deduction for the transferor of the same and, starting from 1 January 2021, in the application of the reduced rate of 5 percent. In this regard, first interpretative and operational clarifications were provided with the circular of 15 October 2020, n. 26 / E
(https://www.agenziaentrate.gov.it/portale/documents/20143/2707601/CIRCOLARE+
n. + 26 + ARTICLE + 124 + DL + RELAUNCH + .pdf / 341656e9-78e7-53bb-1c5388957633f991).

In particular, in paragraph 2.7, what was specified by the Ministry of Health was reported " *which also include pulse oximeters (pulse oximeters and oximeters) among the "diagnostic instrumentation for COVID-19" as they are medical devices that*

make it possible to diagnose a suffering affecting the respiratory system for which COVID-19 is responsible ".

The circular specifies that differently from the list annexed to the decision of the EU Commission 2020/491: "[...] *in consideration of the wording of the provision and its exceptional nature, the list referred to in paragraph 1 of article 124 is mandatory and not exemplary. Therefore, only the goods indicated therein can be sold up to 31 December 2020 exempt from VAT and with the application of the VAT rate of 5 percent starting from 1 January 2021 ".*

However, Article 12 of the VAT Decree states that: " *The transport, installation, packaging, packaging, supply of containers or containers and other supplies or ancillary services to a supply of goods or a provision of services, carried out directly by the transferor or provider or on his behalf and at its expense, they are not autonomously subject to tax in relations between the parties to the main transaction.*

If the main transfer or service is subject to tax, the consideration for the taxable transfers or ancillary services contribute to form the taxable base ".

The accessory principle just reported implies that the fees relating to ancillary transactions, by which we mean those due in relation to transactions that assume a secondary and subordinate position with respect to the main transaction, contribute to forming the tax base of the latter, even if charged separately from the price agreed for the main transaction [cf. Article 78 (1), letter *b),* VAT Directive].

According to the EU Court of Justice, for VAT purposes, " *A service is considered ancillary to a main service, in particular when it constitutes for customers not an end in itself, but a means of benefiting under the best conditions of the main service offered by the provider "(* cf. EU Court of Justice, judgment 18 January 2018, case C-463/16; judgment of 25 February 1999 case C-349/96;

judgment of 19 July 2012, case C-44/11; judgment of 16 April 2015 case C42 / 14, judgment of 8 December 2016, case C-208/15 and resolution of the Revenue Agency of 1 August 2008, no. 337).

In this regard, the Court notes that the fact that a single price is agreed is not a necessary element, even though this eventuality may constitute an indication of the uniqueness of the supply. What matters is the purpose for which the transaction is concluded and the examination of this purpose must be carried out both from an objective and a subjective point of view, i.e. evaluating whether the operation itself has the function of integrating the main operation, improving the conditions for using it, and if the parties intend the operation not to pursue an autonomous purpose.

The tax authorities, in general, clarified in practice (see resolutions of 3 October 2008, no. 367 / E; of 1 August 2008, no. 337 / E; of 15 July
2002, n. 230 / E, reply dated 3 June 2020, n.163) that in order for an operation to be qualified as ancillary it is necessary that it has the following characteristics:

1) must integrate, complete or make possible the main transaction;

2) must be made directly by the same person carrying out the transaction principal or by third parties, but on its behalf and at its expense;

3) must be considered in the con fr onts of the same subject (transferee / customer) against whom the main transaction is made.

With reference to the VAT regime referred to in Article 124 of the Relaunch Decree, this Agency was able to clarify that " *under the conditions provided for by article 12 of the VAT Decree, the same treatment also applies to operations ancillary to the transfer of goods identified by article 124. ..., outside the cases of application of the aforementioned article 12, the transfer individual spare parts as well as ancillary goods will be assessed on a case-by-case basis, even during the ruling "* circular n. 26 / E of 2020, paragraph 2.13).

In light of the above and on the basis of the information provided

by the Applicant, here uncritically assumed, it is believed that the goods subject to this ruling can benefit from the same VAT treatment envisaged for the sale of the principal goods, of which they are accessories.

THE CENTRAL DIRECTOR

(digitally signed)