

Answer n. 148

OBJECT: Use of the VAT credit limit by non-established taxable persons

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

QUESTION

Alfa (hereinafter the "Company" or "Instant") is a company with registered office in an EU Member State, identified directly for VAT purposes in Italy and belonging to the ... Beta group, whose activity consists in the design and marketing of surgical products. In Italy, the Company carries out the wholesale trade of medical and orthopedic products.

In particular, the operations carried out by the Company in Italy can be summarized as follows:

- as regards the passive cycle, the Company purchases the aforementioned medical-orthopedic products both through imports and through similar intra-community purchases of its own goods;

- as regards the active cycle, the Company partly sells the aforementioned assets to taxable persons established in Italy for which the reverse accounting mechanism is applied pursuant to art. 17, paragraph 2, Presidential Decree 633/72, and in part there

sends to other member states of the European Union (non-taxable similar intra-community sales pursuant to Article 41, paragraph 2, letter c) of Legislative Decree no. 331/1993).

Basically, the Company does not charge VAT for active transactions carried out in Italy.

As part of the aforementioned purchase and sale activities, the Company structurally finds itself in a VAT credit position, with the consequent need to request a refund of the VAT credit itself pursuant to art. 30, paragraph 3, lett. c) of Presidential Decree 633/1972.

The Company intends to make use of the VAT regime envisaged for habitual exporters, which allows for the purchase and import of goods and services without paying VAT, within the limits of the so-called ceiling.

Having said that, in relation to the concrete case described above, the applicant, on the assumption of being a habitual exporter, is interested in obtaining confirmation of being able to purchase and import goods and services without paying VAT using the ceiling referred to in art. 8, paragraph 1, letter c) and 8, paragraph 2, of Presidential Decree 633 of 1972, as supplemented by Legislative Decree 29 December 1983, n. 746 and subsequent amendments.

The interpretative question derives from the fact that the legislator uses the term "if resident" in referring to the beneficiaries of the ceiling, as provided for in art. 8, paragraph 2, of Presidential Decree 633 of 1972; the literal interpretation of the aforementioned provision seems to exclude non-resident taxpayers (such as the Company) from the possibility of availing themselves of the status of habitual exporter

INTERPRETATIVE SOLUTION PROSPECTED BY THE TAXPAYER

With regard to the question posed, the petitioner believes that he is entitled to purchase and import the goods without paying VAT, within the limits of the available ceiling, covering

the status of habitual exporter.

This behavior would be consistent with the indications provided by the resolution n. 80 / E of 4 August 2011, which extended the possibility of using the regime of habitual exporters also to subjects not established in Italy, but identified there for VAT purposes and by resolution no. 102 of 21 June 1999, which also granted the tax representatives of non-resident companies the right to exercise the right to purchase goods and / or services or import goods without applying the tax with the use of the ceiling. Furthermore, the indications provided by the aforementioned resolution no. 80 would comply with Article 164 of Council Directive 2006/112 / EC, which generically grants the possibility of benefiting from the scheme to any "taxable person", without any limitation based on the place of establishment.

OPINION OF THE REVENUE AGENCY

With reference to the question represented, the following is observed.

Article 8, second paragraph, of the Decree of the President of the Republic dated 26/10/1972 n. 633 (hereinafter DPR n.633 of 1972) allows those who carry out exports referred to in letters a) and b) of the first paragraph to make, upon presentation of a declaration of intent, purchases without paying VAT, within the limits of the total amount of the consideration for the transfers referred to in the same letters, made during the previous calendar year or in the previous twelve months, as permitted by art. 2, paragraph 2, of the law 18 February 1997, n. 28 (this amount represents, respectively, the so-called fixed ceiling and the so-called mobile ceiling).

This on condition that - as established by art. 1 of the DL 29 December 1983, n. 746, converted by law February 27, 1984, n. 17 - the amount of such fees is greater than ten percent of the turnover; art. 41, paragraph 4, of Legislative Decree 30

August 1993, n. 331 establishes that the considerations for intra-community transfers contribute to the determination of the so-called ceiling and the relative percentages necessary for making purchases without paying VAT.

The art. 8, first paragraph, letter c), of Presidential Decree 633 of 1972 provides that the sales of goods, other than buildings and building areas, and the provision of services rendered to subjects who, as mentioned, carry out sales to the export or intra-community transfers and make use of the aforementioned right to purchase or import without paying the tax.

A similar faculty, to purchase without paying the tax, is granted to subjects who carry out operations similar to exports as well as international services referred to, respectively, in Articles 8-bis and 9 of Presidential Decree no. 633 of 1972, within the limits of the fees relating to said transactions (see last paragraph of both articles).

In these circumstances, purchases can be made without paying VAT within the limits of the so-called ceiling accrued in the previous year (or in the previous twelve months) even when the operations that give access to this option are carried out - as specified in the resolution of 21 June 1999 , no. 102 - foreign subjects identified for VAT purposes in the territory of the State; the tax identification of the non-resident can take place, in the absence of a permanent establishment, directly, pursuant to art. 35-ter of Presidential Decree no. 633 of 1972 (the case in which the petitioner is found) or by means of a tax representative, pursuant to art. 17, third paragraph, of Presidential Decree no. 633 of 1972 (see also resolution no. 80 / E of 4 August 2011 in which the use of the ceiling concerned a subject established in Switzerland,

In light of the existing and aforementioned practice (to which is added the recent answer no.1 of 4 January 2021) and within the limits of the assumption, which cannot be objectively found here, that the applicant, as declared, takes on the qualification

habitual exporter, it is believed that the regulation of the VAT ceiling applies to the specific case, in which the applicant is a non-resident person, established in an EU Member State and identified directly for VAT purposes in Italy.

THE CENTRAL DIRECTOR

(digitally signed)