**CIRCULAR NO.**  **/E**



*Central Directorate regulatory coordination*

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| ***SUBJECT*:** | ***Article 18 of Decree-Law no. 73 of 25 May 2021, converted, with amendments, by Law no. 106 of 23 July 2021 (Sostegni-bisDecree). Amendments to Article 26 of Decree No 633 of the President of the Republic of 26 October 1972. Recovery of VAT on uncollected claims in***  ***insolvency proceedings.*** |

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# PREMISE

Article 18 of Decree-Law no. 73 of 25 May 2021 (so-called Decree-Law 25 May 2021). Decreto Sostegni-bis), converted with amendments by Law no. 106 of 23 July 2021, introduced substantial changes to the discipline of variations in decrease of the VAT base or thetax due brought byArticle 26 of the Decree of the President of the Republic of 26 October 1972, n. 633 (in short, also "VAT Decree" or "Presidential Decree no. 633 of 1972"), providing that in the event of non-payment of the consideration connected to insolvency procedures we no longer have to wait for them to be concluded; that amendment consequently affects the right to deduct the tax corresponding to those variations.

The previous wording of Article 26 provided, in summary, for whichit is relevant here, for the transferor/supplier to adjust downwards the tax levied when the transaction ceases to exist or as a result of non-payment as a result of non-payment proved byindividual enforcement procedures orinsolvency proceedings which have remained unsuccessful (with the definitive conclusion of those procedures), by debt restructuring agreements approved pursuant to Article 182-bis of Royal Decree No 267 of 16 March 1942 (Bankruptcy Law)or plans certifiedpursuant to Article 67, third paragraph, letter d), of the aforementioned Bankruptcy Law.

In this regard, it is recalled that the rules relating to VAT credit notes, contained in Article 26, paragraphs 2 et seq., of Presidential Decree no. 633 of 1972 have been amended several times over the years.

Article 1, paragraphs 126 and 127, of Law no. 208 of 28 December 2015 (2016 Stability Law), with a formulation similar to that now introduced by Article 18 in comment, had anticipated at the timeor opening of insolvency proceedings the possibility of issuing a credit note and, therefore, of deducting the VAT corresponding to the decreasing variations, in case of non-payment related to insolvency proceedings, instead of having towait for the unsuccessful conclusion for the exercise of the relative right.

That provision, applicable in cases where the transferee or principal had been subject to insolvency proceedings after 31 December 2016, was in fact never operational because, by Article 1(567)(d) of LawNo 232 of 11 December 2016 (2017 Stability Law), the legislature established its repeal, restoring the rule that a VAT credit note may be issued only once such proceedings have been unsuccessfully concluded.

However, as will be seen in the following paragraph, the principles affirmed by eu jurisprudence have led the legislator to intervene again on the point, through the regulatory changes under review, in order to adapt the internal legislationto the Union discipline, as interpreted by the Court of Justice of the European Union.

As clarified by the same explanatoryreport to the Sostegni-bisDecree, in fact, "the*amendments made to Article 26 are in accordance with*the principles of the European legal order and in particular with the provision*referred to in Article 90, second paragraph, of Directive 2006/112 / EC (VAT Directive) which gives the States the right to determine whether and under what conditions to recognize the right to the reduction of*  *the taxable amount and the tax in the event of non-payment in whole or in part of the* consideration"."

That said, the first clarifications on the innovations introduced by the provision in comment are provided below.

# UNION LEGISLATION AND CASE-LAW

Article 90 of Council Directive 2006/112/EC of 28 November 2006 (so-called VAT Directive) – from which derives the provision of Article 26 of the VAT Decree

– states that*'1. In the case of ... non-paymentof all or part ... after the time at which the transaction is carried out, the taxable amount shall be duly reduced under the conditions laid down by the* Member *States.*

1. *In the event of total or partial non-payment, Member States may derogate from paragraph 1.'*

As anticipated, the national legislature had chosen to take advantage of the derogation provided for in Article 90(2), making the issue of the variation note subject to the overt fruitlessness of the insolvency orenforcement proceedings, postponing the recovery of VAT already paid and not collected to a very long time.

The version of Article 26 prior to the amendments in question had, however, been censured by the EU Court of Justice due to the excessive duration of insolvency proceedings, the unsuccessful outcome of which was subject to the right to deduct the tax not collected (see judgment of 23 November 2017, Case C-246/16).

In essence, by that judgment the Court states that the purpose of Article 90 of the VAT Directive is to enable the Member States to identify, in the light of the existing national legal system, the specific situations in which non-payment can reasonably be said to have occurred and to what extent. That provisionmust be interpreted "as meaning that a Member State may not make the reduction of the*taxable amount for value added tax subject to the fruitlessness of insolvency proceedings where such proceedings may last more than ten years*".

The Court of Justice also admits the variation in decrease even in the presence of a "*reasonable probability that the debt will not be paid*",referring to the national authorities the task of establishing, "in compliance with the principle of*proportionality*and under the control of the*court, what are the evidence of a probable prolonged duration of the non-payment that the taxable person must provide according to the specificities of the applicable national law*  " (cf. judgment of 11 June 2020, Case C-146/19).

Moreover, as also stated by the Court of Cassation, the right for States to have recourse to the mechanism provided for in Article 26 of Presidential Decree no. 633 of 1972,*"as clarified by the Court of Justice (Case C-246/16), (...) is based on the assumption that,*  *in certain circumstances and because of the legal situation existing in the Member State concerned, non-payment of the consideration may be difficult to establish or may be only provisional. The European courts have, however,stated that it is*

*limited to situations of uncertainty ...* " (cf. judgment, sec. V civ., n. 25896 of 16 November 2020).

# STARTING DATE FOR THE PERIOD FOR ISSUING THE VARIATION NOTE

As is well known, paragraph 2 of Article 26 of the VAT Decree provides for the hypotheses in relation to which the transferor of the good or service provider may make changes in decrease in the tax base and the consequent tax, without specifictime limits, with reference to transactions for which he has already issued an invoice with VAT charge.

From **paragraph 2**  of the aforementioned article 26 was eliminated – by Article 18, paragraph 1, letter a), of the Sostegni-bis Decree– the reference to thepossibilities of non-payment, partial or total, by the debtor (transferee of the good or client of the service) "due*to insolvency proceedings or individual enforcement procedures remained unsuccessful or following a restructuring*  *agreement of debts approved ... or of a certified plan ... published in the commercial*register', which have been made the subject of the specific rules dictated by the new paragraph 3-bisof the same article 26.

As a result of this amendment, paragraph 2 now includes only cases of non-payment "asa result of a declaration of*nullity, annulment, revocation, termination, termination and the like or as a result of the application of rebates or discounts provided for by contract".*

In or inany case, the time limit of one year prescribed in paragraph 3 below remains unaffected for variations resulting from non-payment due to an agreement between the parties or for the correction of inaccuracies in invoicing that have given rise tothe application of Article21, paragraph 7, of Presidential Decree no. 633 of 1972 (invoices for non-existent transactions or bearing fees or taxes to a greater extent than the real one).

The new **paragraph 3-bis** *–* introduced in Article 26 of the VAT Decree by Article 18, paragraph 1, letter b), of the Sostegni-bis Decree – provides that the provision referred to in paragraph 2 also applies in the event of non-payment of the consideration, in whole or in part, by the transferee or customer:

* for insolvency proceedings, debt restructuring agreements referred to in Article182-bis of the Bankruptcy Act and plans certified pursuant to point (d) of the third paragraph of Article 67 of the bankruptcy law (letter a);
* for unsuccessful individual enforcement procedures(point (b)).

The same paragraph*3-bis*  also identifies, with reference to the procedures referred to in letter a), the date from which the variation can be made.

More specifically, if the non-payment is due to the debtor's subjection to insolvency proceedings, the consequent variation can be made, pursuant to the combined provisions of the new **paragraphs 3-*bis***  **and 10-*bis,***starting from the date of opening of the insolvency proceedings (without therefore waiting for the outcome), i.e. the date:

* + the declaratory judgment ofthe application;
  + the measure ordering the compulsory administrative liquidation;
  + the decree of admission to the composition with creditors procedure;
  + of the decree that provides for the extraordinary administration procedure of large companies in crisis.

On the other hand, itremains clear that this right can be exercised from the date of thedecree approving a debt restructuring agreement referred to in Article 182-bis of the bankruptcy law, or from the date of publication in the register of companies ofa plan certifiedpursuant to Article 67, third paragraph, letter d), of the same bankruptcy law1.

If, on the other hand, individual enforcement procedures are activated, the decreasing variation is always subject to the unsuccessful outcome of the same. In such cases,

1 This possibility has been, as seen, excluded from paragraph 2 of Article 26 of the VAT Decree and inserted in the new paragraph 3-bis,letter a), of the same article.

pursuant to paragraph 12 of Article 26 of the VAT Decree – which is not subject to changes – the creditor must wait for the attachment report showing that there are no assets or claims to be attached to the attached third party (in the case of attachment presso third parties), or the attachment report showing the lack of assets to be attached or the impossibility of access to the debtor's home or his unavailability (in the case of attachment of movable property), or, finally (if it is decided to interruptthe enforcement procedure for excessiveburden), after the auction for the sale of the seized asset has been deserted three times.

With the aforementioned new provisions on the subject of variation of the taxable amount, the legislator therefore wanted to "anticipate" the *dies a quo*  relating to the issue of the note of variation in decrease by the creditor in relation to insolvency proceedings.

## Prior lodging of the creditor with the liabilities

In view of the amendments to Article 26 under review, it is necessaryto carry out further assessments as to whether or not the creditor participates in the liabilities in order to make the downward change due to non-payment, also in the light of the indications provided by the CJEU on the matter.

Inparticular, the EU courts analysed the case of a creditor who had been refused the adjustment of the tax paid because of the failure to lodge the insolvency liabilities; in order to ensure compliance with the principle of neutrality of VAT, the Cortand clarified that the reduction of the taxable amount of VAT is allowed in specific cases and, in particular, in the event that the creditor himself can prove that, even if he had lodged the claim in question, it would not have been recovered(see judgment of 11 June 2020, Case C-146/19).

In adherence to the new wording of the standard, it is considered that the issuance of the note of variation in decrease (starting from the date of initiation of the insolvency proceedings) and, consequently, thededuction of the tax not collected, does not result

precluded to the assignor/lender (creditor) who has not lodged the corresponding claim on the liabilities.

The position taken in this regard by previous documents of practice, according to which the note of decreasing variationsis issued in the alternative tothe " necessary participation of the creditor in the competition " must*therefore*be considered outdated(cf. Circular No 77/E of 17 April 2000, paragraph 2.a, and Resolutions No 155/E of 12 October 2001, No 89/E of 18 March 2002 and No 195/E of 16 May2008).

# DEADLINE FOR DEDUCTION OF TAX

According to **paragraph 2**  of Article 26 in comment, the transferor / lender (creditor)

'shall*be entitled to deduct in accordance with Article 19 the tax corresponding to the variation by recording it in accordance with*Article*25.'*

In turn, the second sentence of Article 19(1) of Presidential Decree no. 633 of 1972 provides that*'the right to deduct tax relating to goods and services purchased or imported arises at the time when the tax becomes chargeable and*  *is exercised at the latest with the declaration relating to the year in which the right to deduct arose and under the conditions existing at the time of the birth of that right'.*

In its judgment of 29 April 2004, C-152/02, the EU Court of Justice held that the right to deduct *"must be exercised with regard to the tax period during which the two prescribed conditions are met (...), namely that the supply of the goods or services has taken place and that*the*taxable person is in possession of the invoice or document that can be considered equivalent according to the criteria laid down by the Member State concerned"*.

This approach is confirmed more recently by the judgment of 21 March 2018, C-533/16, in which it is reiterated that *"the right to deduct provided for in Articles 167 et seq. of Directive 2006/112 is an integral part of the VAT mechanism and, in principle, cannot be limited. In particular,this right*  *must be*  *exercised*  *immediately* in *respect of*  *all*   *taxes*  *which*  *have* been *levied* on *the*  *transactions*  *carried out.*

*upstream"* (see, to that effect, judgments of 15 September 2016, C-518/14, paragraph 37, and of 19 October 2017, C-101/16, paragraph 36 and the case-law cited).

The Court observes that, although under Article 167 of Directive 2006/112 the right to deductVAT arises on the date on which the tax becomes chargeable, in principle, the exercise of that right is possible, under Article 178 of that directive, only from the moment when the taxable person is in possession of an invoice (see, to that effect, judgment of 15 September 2016, C-518/14, paragraph 35 and the case-law cited).

In recognising the compatibility with EU legislation of national legislation which, on grounds of the need for legal certainty, lays down a limitation period for the exercise of the right to deduct, the Court has in that context highlighted the need for that period not to render practically impossible or excessively difficult the exercise of the right to deduct (principle of effectiveness).

In line with the principles of the Court referred to above, Circular No 1/E of 17 January 2018, paragraph 1.4, clarified that the exercise of the right to deduct VAT relating to purchase invoices received is subject to the existence of a twofold requirement for the transferee/principal:

1. the substantive assumption of the execution of the transaction (i.e. chargeability);
2. the formal condition of possession of the relevant invoice, drawn up in accordance with the provisions of Article 21 of Presidential Decree no. 633 of 1972, by the taxable customer / transferee.

It is on the occurrence of both conditions that, therefore, the taxable transferee/principal may, after registration of the invoice in accordance with the procedures laid downin the first paragraph of Article 25 of the same DPR, deduct the tax paid in respect of purchases of goods and services, or imports of goods.

The right to deduct may therefore be exercised by the date of submissionof the declaration relating to the year in which both of these conditions were met and with reference to the same year.

As already clarified with some replies to requests for interpellation (see no. 192 and no. 119 published, respectively, on 24 June 2020 and 17 February 2021 in the appropriate section of the  Revenue Agency's website), a partial modification and integralaction of whathas already been clarified with circular no. 1/ E of 2018 (see paragraph 1.5), the above principles also apply with reference to the deduction of VAT relating to the note of variation in decrease, in the sense that issued timelysaid note - within the deadline for ordinary submission of the annual VAT return relating to the year in which the conditions for making the change in decrease occurred - "the*tax deducted will flow into the relative perio*  *settlement say or, at the latest, in the annual VAT reference declaration*". In other words, for the purposes of deduction, the time of issue of the variation note is also relevant, which represents the formal prerequisite necessary for the concrete exercise of the right.

To exemplify, if the prerequisite for making the decreased change occurs in the 2021 tax period, the variation note can be issued, at the latest, by the deadline for submitting the VAT return forthe year 2021, i.e. by 30 April 2022. If the note is issued in the period from 1 January to 30 April 2022, the deduction may be made as part of the periodic VAT settlement relating to the month or quarter in which the note is issued, i.e.directly in the annual declaration for the year 2022 (to be submitted by 30 April 2023).

That said, in case of non-payment due to insolvency proceedings:

* the date from which the issuance of the note of variation in decrease and, consequently, the exercise of the right to deduct VAT by the transferor / supplier is the one in which the transferee / customer is subject to the procedure itself;
* the date by which the note of decreasing variationmust be identified within the deadline for submitting the VAT return relating to the year in which the conditions for making the decrease change occurred, that is, with

particular reference to insolvency proceedings, within the deadline for submitting the VAT return for the year in which it is issued:

* + the judgment declaring bankruptcy;
  + the measure ordering compulsory administrativeliquidation;
  + the decree of admission to the composition with creditors procedure;
  + the decree providing for the extraordinary administration procedure for large companies in crisis;
* the date by which to exercise the right to deduct,on the otherhand, must be identified on the date of the periodic VAT settlement relating to the month or quarter in which the note is issued or, at the latest, in the VAT return relating to the year of andmission of thenote.

As regards the amounts which may be subject to variation, it should be noted that, in the case of an arrangement with creditors, unlike other insolvency proceedings, the part of the fees invoiced by the creditors to be paidby the debtors subject to this procedure is specifically identified by the admission decree, by virtue of the specific discipline provided for by the bankruptcy law2.

From this it follows, therefore, that the creditor can issue a note of variationand decrease only for the portion of unsecured credit destined to remain unsatisfied, based on the percentages defined by the procedure.

For further clarification, an explanatory example is given below:

* **30 November 2021:** following the saleof anasset, the transferor (creditor) issues an invoice for taxable transactions of € 45,000 and tax of € 9,900, not paid by the transferee (debtor);
* **10 January 2022:** judgment declaring bankruptcy of the debtor;

2 Specifically, the Bankruptcy Lawprovides that: 'Inany event, the proposal for*an arrangement with creditors must ensure payment of at least*  ***twenty*** per cent of the amount *of the unsecured claims'*(Article 160); and, in the case of competing proposals, that these 'are*not admissible if in the report referred to in the third paragraph of Article 161 the trader certifies that the debtor's composition proposal ensures payment of at least the*  ***four*** *per cent of the amount of unsecured claims or, in the case of an arrangement with business continuity as referred to in Article 186-bis,*at least ***thirty*** per cent of*the*  *amount of unsecured claims'*(Article 163).

* **10 January 2022:** starting date of the deadline from which the note of decreasing variation can be issued;
* the creditor issues a note of decrease in variation for € -45,000 and tax for € -9,900;

**Hypothesis 1: the creditor issues the variation noteand in the year 2022:**

the right to deduct can be exercised at the latest when submitting the VAT return for the year 2022 (to be submitted by 30 April 2023); for the effect, the creditor reduces the tax due by 9,900 euro.

**Hypothesis 2: the creditor issues the change note within the first four months of the year 2023 (deadline for submitting the VAT return for 2022):**

in this case, the right to deduct can be exercised in the liquidation of periodsrelating to the month / quarter of issue or, at the latest, in the VAT return for the year 2023 (30 April 2024); for the effect, the creditor reduces the tax due by 9,900 euros.

# OBLIGATIONS OF THE TRANSFEREE/CLIENT

Thefirst sentence of paragraph 5 of Article 26 of Presidential Decree no. 633 of 1972 remains unchanged, according to which, where the transferor or lender avails himself of the aforementioned rightto make the change in decrease,*"the transferee or principal who has already registered the operationpursuant to Article 25, must in this case register the variation in accordance with Article 23 or 24, within the limits of the deduction made, without prejudice to his right to repayment of the amount paid to the transferor or lender by way of*recourse.'

On the basisand in the last sentence added to the aforementioned paragraph **5**  of the VAT Decree by Article 18, paragraph 1, letter c), of the Sostegni-bis Decree,however, this obligation to record the variation note issued by the creditor "does*not apply in the case of insolvency proceedings*referred to in*paragraph 3-bis, letter a)*". The curator or commissioner receiving the note

of variation, therefore, is not required to note the corresponding increase in the register referred to in Article 23 or Article 24 of Presidential Decree no. 633 of 1972. This implies that, in this case, the procedure is not required to pay the tax, which remains the responsibility of the Treasury (see Circular No 12/E of 8 April 2016, paragraph 13.1).

On the other hand, it is considered that the obligation to register the variation, in adjustment of the deduction originally made, remains, on the part of the transferee / clientand, in the debt restructuring agreements referred to in Article 182-bis of the bankruptcy law and in the plans certified pursuant to Article 67, third paragraph, letter d) of the same law. These institutes, in fact, cannot be qualified asinsolvency proceedings in the strict sense, since they lack both the character of "insolvency" and that of "officiality"3. The transferor/supplier, therefore, can deduct VAT, to the extent set out in the variation note, while the otherparty is required to reduce the deduction he had made in equalmeasure, returning the tax to the Treasury (see circular no. 12/E of 2016, paragraph 13.2).

The aforementioned obligation to register the variation, in adjustment of the original deduction made, also remains in the hands ofthe transferee / client, in the case of unsuccessful individual enforcement procedures, referred to in paragraph 3-*bis,*letter b), of the same article 26 of Presidential Decree no. 633 of 1972.

## Definitionof the procedure. Further change (increasing)

The new **paragraph 5-bis** of Article 26 of Presidential Decree no. 633 of 1972 – introduced by Article 18, paragraph 1, letter d), of the Sostegni-bis Decree – provides that "inthe*event that, following the events* referred to in paragraph *3-bis",*and therefore after the issuance of the note of variation in decrease, "the*consideration is paid, in whole or*  *in*  *part,*   *the*  provision  *referred*   *to in*  *paragraph*  *1 4*applies,' i.e. the obligation to issue a

3 It is recalled that "insolvency" means the participation of all creditors in the agreements, while "officiality" means the involvement of the public authority already from the opening phase of the procedure.

4 In particular, Article26(1) of the VAT Decree obliges the transferor/supplier to issue an increasing variation note*'whenever, after the invoice has been issued or the registration referred to in the*

note of increasing variation. 'In*such a case, the transferee or principal who has fulfilled the obligation referred to in paragraph 5 shall be entitled to deduct in accordance with Article 19 the tax corresponding to the increased*variation.'

It should be noted that, in the event thatthe creditor subsequently receives payment, in whole or in part, the right to deduct the tax indicated in the relative note of variation in increase – pursuant to the aforementioned paragraph 5-*bis –* after registration of the same, arises solo in the hands of theassignees / clients who, by virtue of the first sentence of paragraph 5, have previously adjusted the increased tax and paid it.

Following the explanatory example of debtor bankruptcy referred to in paragraph 3 above, it can be further assumed:

* **10 June 2026**: definition of the distribution plan of the debtor's bankruptcy procedure which provides for the partial payment to the creditor of the agreed consideration, for a total amount of € 30.000, ie for an amount higher than the amount adjusted in decrease (paragraph 3-*bis*);
* **18 June 2026:**payment of the consideration as per the distribution plan;
* **30 June 2026:**deadline for issuing the note of variation in increase pursuant to paragraph 5-bis; the creditor issues note of change in increase for €

24,590 taxable amount and € 5,410 tax;

* **16 July 2026:**deadline of the liquidation of June 2026 (for monthly taxpayers), to which the tax relating to the note of variation in increase contribute, ie a debit tax equal to € 5,410; or
* **August 20, 2026:**end of the liquidation of the second quarter of 2026 (for quarterly taxpayers), to which the tax relating to the note of variation in increase contribute, ie a debit tax equal to € 5,410.

*Articles 23 and 24, the amountof a transaction or the amount of the tax thereof shall be increased for any reason.'*

# EXPIRATION

By express provision made by paragraph 2 of Article 18 of the Sostegni-bis Decree, the described regulatory changes made toArticle 26 of the VAT Decree are applied only with reference to insolvency proceedings initiated from 26 May 2021, the date of entry into force of the same Sostegni-bisDecree.

If the debtor, therefore, has been subjected toinsolvency proceedings on a date prior to 26 May 2021, he will still have to refer to the previous discipline brought by the previous text of Article 26, waiting for the unsuccessful outcome of the same in order to be able to issue a note of variation in decrease.

# FAILURE TO ISSUE THE CREDIT NOTE AND RECOVERABILITY OF THE TAX

Considering that this Agency receives questions regarding the general applicability of alternative institutions with respect to the decreasing variation referred to in Article 26 of Presidential Decreeno. 633 of 1972 in the event of failure to issue the credit note within the terms provided for by law, it is considered appropriate to provide the following clarifications on this point.

As is known, Article 26, paragraphs 2 and following, of the VAT Decree identifies the cases in which it is possible to vary the taxable amount and the tax in a decrease, on the assumption that the original invoice was registered by the transferor and has, therefore, contributed to the VAT settlement.

In this regard, it should be pointed out that exceeding the oral temp limitprovided for by the legislature for the exercise of the right to deduct – which can be found in the combined provisions of Articles 26, paragraphs 2 and following, and 19, paragraph 1, of the VAT Decree – does not imply, in general, that the recovery of the tax not deducted can take place, alternatively, by presenting, at a later stage, the supplementary declaration in favor referred to in Article 8, paragraph 6-*bis*5, of the decree of the President of the Republic of 22 July

5 Article 8 of Presidential Decree No 322 of 1998, in regulating, inter alia, the integration of VAT returns and their effects, provides:

1998, n. 322, containing the non-made reduction of the tax, or an application for reimbursement pursuant toArticle 30-*ter6* of the VAT Decree.

It is considered, in fact, that the expiry of the term provided for by the creditor to be able to make the variation in decrease cannot legitimize the same, in itself, to adopt such solutions, from which, in absence from the requirements provided forby the relative regulatory provisions, a violation of the decadent terms established by the rule would result.

In particular, it should be noted that, in the event that the deadline for issuing the variation note has already expired, it is notpossible to submit a supplementary VAT return in favor pursuant to Article 8, paragraph 6-*bis,*of Presidential Decree no. 322 of 1998 to recover the tax paid, where there is no evidence of errors and omissions to be remedied (necessary conditions ssari for the purpose of its presentation). The issuance of a note of decreasing variation is, in fact, a faculty that the taxpayer can renounce. Finally, it must be said that the issue of a variation note produces effects other than the supplementary declaration. While the first ensures that the principle of neutrality of VAT is respected (the right to deduct for the person who issues the variation note generally corresponds to the obligation to register the tax due for those who receive ite), the supplementary declaration allows only the recovery of the tax paid to a greater extent but not also the repayment by the person who deducted it.

With regard to the institution governed byArticle 30-ter of the VAT Decree, it is considered that, since it is a residual and exceptional rule, this applies

«*6-bis. (...) value added tax returns may be integrated*to correct errors or*omissions, including those which have led to the indication of a higher or lesser taxable amount or, in any case, of a higher or lesser tax liability or of a greater or lesser deductible surplus,*by means of a*subsequent declaration to be submitted, in accordance with the provisions of Article 3, using models conforming to those approved for the tax period to which the declaration relates, not later than the time limits laid down in Article 57of Decree No 633 of the President of the Republic of 26 October 1972.'*

6 Article 30-terof the VAT Decree provides that '1. *The taxable person shall submit an application for a refund of the tax not due, under penalty of forfeiture, within two years of the*date of payment of the tax*or, if later, of the day on which the condition for the refund was met.*

1. *In the case of the application of a tax not due to a supply of goods or services,established definitively by the Tax Authority, the request for repayment may be submitted by the transferor or supplier within two years of the return to the transferee or principal of the amount paid* as *recourse.*
2. *The refund of the tax shall be excluded where the payment has taken place in a context of tax*fraud.'

whenever there are objective conditions which do not make it possible to carry out the remedy of a general nature (in the present case, theemission of a note of decreasing variation). It must therefore be held that that institution cannot be used to remedy the expiry of the limitation period for the exercise of the right to deduct where that period has elapsed by "other"inertia of the taxable person7.

The possibility of recourse to reimbursement must be recognized, however, where, for example, the taxpayer, for reasons not attributable to him, is not entitled to issue a note of variation in decrease pursuant to Article 26 of Presidential Decree no. 633 of 19728. .

Where, therefore, the time limits for issuing the variation note have expired,

in the impossibility of submitting a supplementary VAT return in favor pursuant to Article 8, paragraph*6-bis,*of Presidential Decree no. 322 of 1998, to recover the tax paid at the time, the taxpayer, in the presence of the application conditions, may make useof Article30-terof Presidential Decree no. 633 of 1972.

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The regional directorates will ensure that the instructions provided and the principles set out in this circular are punctually observed by the provincial directorates and the dependentoffices.

THE DIRECTOR OF THE AGENCY

Ernesto Maria Ruffini

*(digitally signed)*

7 See reply to question no. 663 of 10 May 2021.

8 See replies to question nos. 592 and 593 of 15 December 2020 and no. 190 of 13 June 2019.