STUDIO
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COMMERCIALISTA | STUDIO LEGALE, SOCIETARIO E DEL LAVORO

Dear Audience

RE: False invoices, the buyer is not required to investigate.

Invoices for non-existent transactions represent a particularly serious processing method with often simple schemes but also with a set of extremely complex operations.

There are essentially two types of invoices for non-existent transactions.

The first, consisting of **subjectively non-existent** transactions, arises in the event that the issuer is different from who actually carries out the transaction or, conversely, if the recipient of the invoice is different from the actual purchaser of the good or service. In practice, there is a desire to conceal the person who actually carries out the operation.

On the other hand, invoices for **objectively non-existent** transactions are characterized by the partial or total absence of the supply or service invoiced. For example, invoicing for the provision of services that were never performed, due to the difficulties of control bodies to be able to contest their veracity.

Sometimes, however, it happens that the Revenue Agency or the Finance Police challenge the buyer, who receives a purchasing invoice, about the validity of the purchase transaction, arguing, that if the seller was really an operating subject, together with the invoices for activities already carried out, he could also issues false ones, or, as frequently happens, of a subject lacking economic substance, the so-called "paper mill", which has no other purpose than to issue invoices for illegal purposes of various kinds, classifying the operation as non-existent and recovering both the cost, which is considered non-deductible, and the VAT deducted.

Leaving aside the aspect of both civil and criminal sanctions, which are not the main topic of this article, it is useful to remember that in the case of non-existent invoices, in order to discharge the burden of proof from the purchaser's knowledge of the fraud committed by the supplier, the administration cannot require the taxpayer to carry out complex verifications similar to those that the administration itself can carry out by its own means.

This principle was established by the Court of Appeal in ruling 14102/2024; the case addressed in the ruling is substantially similar to many cases that have occurred in recent years.

The purchaser of the goods is questioned for the non-deductibility of the VAT due to subjectively non-existent invoices because they were issued by a company that has omitted tax obligations, has no structure and sometimes no employees.

According to established case-laws at European and national level, in order to adjust the VAT on purchases, the Office must establish, even presumptively, that the purchaser knew or could have known about the unlawful act committed by the transferor.

In many checks, proof of this awareness is represented by tax violations committed by the seller (omissions in the declaration, non-payments, previous similar disputes, etc.).

It is irrelevant that the purchaser could not have obtained that information, either because it is data that is not accessible to third parties or because it does not have the powers or databases of tax authorities.

In the case examined by the Court of Appeal, the Office recovered the VAT deducted on purchases of packages considered subjectively non-existent, as the supplier would have lacked organization.

The two judgments on the merits substantially confirmed the request: in particular, according to the appeal judges, these were subjectively non-existent invoices due to the lack of adequate labor on the part of the supplier and the falsity of the invoices relating to the purchase of production tools (sewing machines).

During the appeal to the Court of Cassation, the defense raised several issues. One of these was that the rectification focused on the lack of organization of the supplier without examining whether the buyer was aware of the deception.

In addition, the lack of staff to manage the goods sold and the falsity of the equipment supplied could not be attributed to the purchaser, especially since it did not have inspection powers similar to those of the Office.

In addition, it was not taken into consideration that the prices charged were in line with market prices and there was no evidence that the seller had returned part of the VAT to the company.

The Supreme Court pointed out that, in the case of accounting for invoices issued by unorganized companies or intermediaries, the Administration must demonstrate the recipient's awareness of the evasion, also providing presumptive evidence based on specific objective elements.

Once this burden has been met, it is for the taxpayer to demonstrate that he or she has acted with the utmost diligence required of a prudent trader, in accordance with the principles of reasonableness and proportionality in the light of the actual circumstances.

The judgment in question clarified that the absence of protection of the transferee cannot be proven by requiring in-depth checks, similar to those carried out by the administration with all the means at its disposal.

Hence the principle that in order to demonstrate that the transferee knew or should have known about VAT fraud in the production or distribution chain, the precautions required must be reasonable and not complex. The transferee cannot be expected to carry out detailed checks such as those which the tax authorities might do.

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