

To the clients:

Subject: from 1 January 2025, staff posting is subject to VAT.

Posting occurs when an employer (*posting company*), **to satisfy its own interest**, temporarily puts one or more workers at the disposal of another party (*hosting company*) for the performance of a specific work activity.

The period of activity at the *hosting company* must be temporary and cannot be indefinite. It is understood that the duration of the posting must be functional to the persistence of the posting company's interest (Court of Cassation no. 23933 of 25 November 2010) and **the consent of the employee is not required** (Court of Cassation no. 4003 of 21 February 2007).

Posting can be legitimized by any productive interest. It must be specific, relevant, concrete and persistent for the entire period in which the posting is ordered (Cass. 7 April 2015 no. 6944; Cass. 15 May 2012 no. 7517). Furthermore, the posting can never take the form of a mere interest in the payment for the provision of work to others, which characterizes, on the contrary, the particular case of outsourced work.

Posting is also allowed for fixed-term workers, in compliance with the limits of validity of the relationship. The employer is required to communicate the posting to the Ministry of Labour within 5 days (art. 1, c. 1183, L. 296/2006) with the Lav Unified form.

There is a specific discipline that regulates posting aimed at avoiding staff reductions (Article 8, paragraph 3, Legislative Decree 148/93 converted into Law 236/93). In cases of contraction of production activity, it is possible to post workers to another company in the group, as an alternative tool to the redundancy fund. In such cases, in fact, the employer may have a specific interest in preserving by force (and at his/her disposal) the workers temporarily suspended through the exchange of employees with companies belonging to the same group.

As regards enrollments in the Unified Employment Ledger, the *hosting company* must note the identification data of the worker (name, surname, tax code, qualification, level of contractual classification and posting party), while the posting company makes full annotations also with reference to the attendance calendar and salary data.

During the posting, the employee performs his or her work with another employer, with simultaneous subjection to the latter's order and control, although the ownership of the relationship remains with the posting employer.



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When the posting takes place in violation of the conditions provided for by law, the worker may request, by means of a judicial appeal (notified also only to the *hosting company*), the establishment of an employment relationship with the person who has actually used the service (Article 30, paragraph 4 bis, Legislative Decree 276/2003).

The VAT rules have been the subject of a conflict between the Italian legislation that considered transactions outside the scope of VAT in the presence of certain conditions and the jurisprudence of the European Union and national that considered them taxable.

Now, following the abrogation of the national provision (art. 16 ter DL 131/2024 converted into L.166/2024), loans and postings **stipulated or renewed as of 1 January 2025 are subject to VAT.**

It is worth mentioning the recent amendment to the sanctioning discipline of outsourcing which touches on two profiles of illegitimacy: the principle of the solidarity regime between the contractual party that outsources labor and the one that uses its services, in the context of a situation of illegitimacy that makes the operation at risk and subject to sanctions.

The buyer – entrepreneur, the contractor, as well as any subcontractors, are jointly and severally liable for the payment of wages to workers. This provision, on joint liability in contracts and subcontracts (Article 29, paragraph 2, Legislative Decree 276/2003), also applies in cases where the user resorts to the supply of workers by parties other than those authorized to carry out supply of work, as well as in cases of contracting and posting without the requirements that must necessarily be present for these institutions to be configured contractual.

In the case of procurement contracts that do not meet the requirements of Article 29, paragraph 1 of the Biagi Decree (presence of organization of means, managerial and organizational power of the contractor and assumption of business risk), or of posting without the requirements of Article 30, paragraph 1 of the same Legislative Decree 276/2003 (interest of the posting party and temporary nature of the posting), the user and the supplier are punished with the new **criminal sanction**.

It should be noted that these are permanent crimes, i.e. those unlawful conducts that have a continuous development over time and therefore do not end with a single act. These are the crimes of:

- unauthorized supply (Article 18, paragraph 1, first sentence, and paragraph 2);
- fraudulent administration (art. 18, paragraph 5-ter);
- procurement and posting without the legal requirements (art. 18, paragraph 5-bis).



In all three cases, in fact, we have the consummation in the place and for all the time in which the work activity is used but not in the place where the contract is signed or the agency from which the workers come is based (Cass. 25313/2015).

Consequently, the permanent nature of the offence means that the moment of consummation of the offence occurs with the cessation of the conduct, which is relevant both for the purposes of identifying the applicable rule and for the purposes of starting the limitation period.

Therefore, conducts that began before 2 March 2024 and continued after that date will have exclusively criminal relevance and will therefore be subject to the new penalties established by the new Article 18, Legislative Decree 276/2003.

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