

# Studio Baldi News

## Fortnightly Newsletter

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### CLARIFICATIONS REGARDING THE "CASH-BASED VAT" SYSTEM

On 21 November the Tax Office issued a decision containing a number of important clarifications regarding the new "cash-based" VAT system, which may be adopted for transactions carried out from 1 December by taxpayers with a turnover of under 2 million euros. With regards to the exercise of the option, which is binding for a three-year period, the Tax Office has specified that "conduct implying intent" is sufficient, to be confirmed, however, in the VAT Options section of the annual VAT return after the adoption of the procedure. In the event that a business starts during the year, the option may be exercised at that time. Exit from the system is automatic upon exceeding the maximum limit of turnover (and, in this case, coinciding with the first VAT payment after exceeding the threshold), or voluntary, at the expiry of the three-year period (with communication in the first VAT return after the decision to leave the system). For those adopting the system, invoices issued must bear the phrase "IVA per cassa" (Cash-based VAT) and a reference to "art.32-bis del D.L. n. 83 del 22.6.2012". Failure to show the aforementioned reference is considered as an autonomously sanctionable formal violation.

### DEVELOPMENTS REGARDING VAT FROM 2013 FOR EU INVOICES

Pending the Legislative Decree that is to implement EU Directive 2010/45, we would like to report the main developments that will come into effect from 1.1.2013: - the generalised obligation to integrate suppliers' invoices, both for the purchase of goods and for the acquisition of services; the obligation to issue an invoice for all sales of goods and provisions of services which are not taxable, carried out both with taxable Community and "extra" Community customers; - the moment of incurring VAT on Community purchases and sales coincides with the start of transport (from Italy for sales, from other Community countries for purchases); - the usual rules shall continue to apply for sales for which the transfer of ownership is deferred (e.g. sales subject to approval or testing, or sale or return contracts).

### NEW TERMS FOR ACCOUNTING OBLIGATIONS IN COMMUNITY OPERATIONS FROM 2013

From next year, the failed receipt of an intracommunity invoice must be regularised by the 15th day of the third month following that in which the transaction took place (instead of within the second month). The issue of an invoice for the provision of generic services to a Community person or entity may be issued within the 15th day of the month following that in which the operation took place. For services performed within the same month for the same person or entity, it is possible to issue a single invoice within the 15<sup>th</sup> day of the following month.

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For generic services, invoicing in advance does not affect the moment of incurring the tax liability (for INTRASTAT purposes), while it does give rise to a payment in advance. From next year, the volume of turnover will also take account of the provision of non-taxable services made to non-resident customers (EU and extra-EU). For “internal” invoices, it will be necessary to indicate the VAT number of the customer or assignee, and for “non-VAT” persons or entities, the tax code.

#### **CASH REGISTER CHECK: CONSEQUENCES**

Although the Tax Office has equated the failed periodic check of a “cash register” with its failed instalment (with consequent license suspension of from 15 days to 2 months), Tax Commissions have fortunately been operating in a different manner. The “Regional” Tax Commission of Turin has established that every sanction must be prescribed by a legal provision and that an administrative measure is not sufficient, and therefore the failed periodic check of the “cash register” should be sanctioned with a penalty of from 258 to 2,065 euros.

#### **MINIMUM DOCUMENTATION FOR FUEL PURCHASED WITH A CREDIT CARD**

The Tax Office has set out the minimum compulsory conditions for eliminating the “fuel card” while still allowing for VAT deduction and deduction of cost. The means of payment (credit card, cash card, etc.) must be registered in the name of the person or entity carrying on the business and, as well as the consideration amount, the bank statement must also show the date of purchase of the fuel and the name of the assignor. This would occur through a credit card agreement with the oil companies.

#### **IRPEF-IRES (Personal Income Tax-Corporate Income Tax): CLARIFICATIONS REGARDING BAD DEBTS**

Opinions and comments continue to appear in the specialised press regarding the recognition of tax losses for receivables overdue for at least six months, for an amount not greater than € 2,500, without the presence of further requirements. The most prudent view is that in the event of a number of receivables with the same person or entity, the entire credit balance should be considered and not the single position. In addition, in the event of insured receivables, the limit only applies to the non-insured amount. With regards to “debt restructuring agreements”, the prevalent view is for deductibility of the loss also on the part of those that have not entered into the agreement.

#### **THE ELECTRONIC INVOICE: A NEW DECREE IS EXPECTED**

A law decree implementing Community Directive no. 45/2010 regarding computerized documents is expected to be issued in the next few days. Specifically, electronic invoices will be considered as equivalent to paper invoices to all intents and purposes, with considerable simplifications for their creation and issue. Paper invoices and electronically created invoices may be stored electronically, while electronic invoices (as they are called) can only be stored electronically. An invoice created in electronic form but sent and received in paper form can only be considered as an electronic invoice by the issuer. The choice of invoice format is free, as is the choice of the means used to ensure the original authenticity, the integrity of contents and the legibility of the invoice. The specific techniques for electronic invoicing, due to become obligatory in public administration transactions, will be indicated in a further measure to be issued shortly.

PLEASE NOTE THAT THE NEWSLETTER WILL RESUME FROM JANUARY, AFTER THE CHRISTMAS BREAK