

31 January 2025

The VAT relevance of staff secondments in the Law-Decree “salva infrazioni”

The legal framework until 31 December 2024

Until 31 December 2024 staff secondments “reimbursed at cost price” were not taken into account for VAT purposes.

Such VAT exemption regime was applied to all secondment agreements which provided for a consideration awarded to the seconding employer for an amount equal to the labour cost of the seconded employee.

The conflict with the EU legislation and the CJEU decision

In 2020 the CJEU, with the “San Domenico Vetreria” decision (C-94/19), affirmed the incompatibility of the Italian provisions with the EU legislation, provided that it did not consider relevant for VAT purposes the staff secondments within corporate groups for which it was granted consideration, irrespective of whether that consideration was equal to the cost of the detached employee or not. Therefore, according to the Court, staff secondments for which any amount is paid must always be interpreted as service obligations upon consideration and, consequently, VAT shall apply.

The framework introduced since 1 January 2025 by Law-Decree “salva infrazioni”

To prevent potential infringement procedures by the EU institutions, through Law-Decree 131/2004, the national legislator repealed the previous VAT discipline applied to staff secondments. Consequently, as of 1 January 2025, consideration for staff secondments is subject to the application of 22% VAT. Nevertheless, according to the legitimate expectations principle, all the secondments until 31 December 2024 are expressly excluded by the scope of application of the rule.

Necessary revision of operational strategies and corporate practices

Companies will be required to reconsider their policies for secondments, including those within corporate groups, thus aligning the agreements to the new legislation. Finally, for all the groups operating in sectors suffering from limitations to VAT deductibility (e.g. banking, finance, insurance or operating in the health compartment), the beneficiaries of the secondment will face additional costs for the comprehensive total of the secondment.

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