



Dottorato di ricerca in Diritto Tributario delle società

XXIV Ciclo

**ANALISI SULL'IPOTESI DI ESTENSIONE  
GENERALIZZATA DEL *REVERSE CHARGE***

- Abstract -

Relatore:

Chiar.mo prof.

Massimo Basilavecchia

Candidato

dott. Vittorio Di Stefano

## **Summary**

The purpose of this paper begins by noting that the current basic VAT rules is strongly subject to the risk of fraudulent phenomena that undermine the financial resources to Member States and the Community by producing at the same time, competitive distortions that negatively impact on economic operators and system in general. Research is therefore playing its first chapter, the evaluation of the regulatory process that has involved the introduction of VAT and subsequent harmonization of legislation between Member States, highlighting the reasons that led the legislature to choose the system of taxation founded on the principle of deduction, to ensure tax neutrality with regard to economic operators. The introduction of the rules concerning intra-Community trade, with the definition of a new tax requirement no longer based on the material fact of crossing the customs of the good, did assume primary importance to the accounting documentation proving the exchange and produced as a result an increase in the administrative burden of taxpayers, whose purpose is to be found in the need to avoid loss of revenue.

In this context, an assessment of the institution of the reverse charge in its evolution as a tool to apply anti-fraud, taking into account the guidelines of the European Commission on the hypothesis of a generalized extension. The original application of reverse charge under Article 17 of DPR 633/1972 for the purchase of goods and services by non-residents is based, in fact, on the need to identify the taxpayer to allow a recovery easier and safer; assumptions under the reverse charge in case of default of the assignor, contained in art. 6, co. 8, of Legislative

Decree. N. 471/1997 for internal operations and in art. 46, co. 5, the D.L. No. 331/1993 for the community, rather respond to the need to regularize the operation in case of non-billing by the taxpayer on which usually falls the burden of payment of tax. In the field of intra-Community transactions, the tax exemption mechanism responds to the need to ensure the proper functioning of the tax even in the presence of significant differences between the laws of individual Member States. The transposition of Directive 2008/8/EC also extends this mechanism in a general way to supplies of services. With regard to domestic operations, however, the reverse charge was initially applied in the gold market to ease the financial position of traders and only later was applied in other markets with the specific purpose of combating the phenomenon of carousel fraud. From such considerations as the reverse charge mechanism has been originally applied according to different ratio, assuming only later, however, the function of combating fraud carousel. At present we can also say that, while internally maintains a substantial selectivity in the application of reverse charge, in intra-EU instead of the reverse charge mechanism has been generalized. However, this dualism in the application of the tax is not devoid of critical factors, mainly related to the event of financial transactions, for both the transferor and the transferee.

The role of the institution of the reverse charge as a means of tackling fraudulent phenomena that affect the value added tax was imposed in the community over time, at the emergence of increasing awareness of not being able to arrive at a definitive system of VAT, based on the principle of taxation in the country

of origin of the transaction, because of insufficient degree of harmonization of national legislation that would require the system to be introduced. Its effectiveness is due to the peculiarities of the mechanism of taxation that, notwithstanding the deduction system with vat compensation, combines in a single operating entity, the transferee or purchaser, has the obligation to pay the tax is the right of deduction which arises from it. In terms of taxation, therefore, the operation results in a clearing transaction that prevents the phenomenon of eliminating fraudulent collection of tax by means of the supplier, with the risk that he will then not the verses treasury . Taking into account the European Commission guidelines on the subject, it is shown that any amendment of the VAT system must meet the following requirements:

- Significantly reduce the possibility of fraud;
- Do not produce a disproportionate burden borne by economic operators and tax administrations;
- Ensuring the neutrality of the tax;
- Avoid discriminatory treatment between operators in different countries.

The second chapter discusses the impact of a generalized reverse charge can have on the fundamental characteristics of the tax. In this sense we dwell, in the first paragraph, on the taxable status in the case of reverse operation involves the transferee: introduced the dual system, where B2B transactions are based on

symmetry-taxable tax exemption, the qualifying counterparty as taxable for vat it becomes a prerequisite for the proper enforcement. In this context, however, are many aspects that can create uncertainty among traders due to the need to detect when the other party is acting as a taxable person and when that final consumer, with the risk for the buyer not to see recognize the corresponding deduction or the transferor should apply the reverse charge of being charged by your state, then the VAT that would have to collect by way of vat compensation. However, if you were to ask the supplier to carry out further than a check on the existence of the VAT number supplied by the purchaser, the regime would pose considerable difficulties and excessive increased administrative burden on taxpayers. The analysis has thus allowed to highlight a progressive tax subjectivation which results in an increased burden on economic operators, have to check the subjective nature of its counterpart.

As regards the institution of vat compensation, the generalization of the mechanism will lead to its abandonment in the application of the tax, however, would overcome the issue of direct action for reimbursement against the tax authorities for the recovery of 'VAT wrongly paid, the benefit is tax neutrality for greater legal certainty in respect of economic operators. The deductible amount is shown how this institution assume an essential role in achieving the objectives pursued, such as the neutrality of the tax, so that Member States may limit it only where expressly permitted by the Directive. In this regard, we focused on the character of immediacy that the legislature has recognized and how it prevails even on the principle of integrity

of the tax. It is emphasized, finally, the VAT refund process that, as a supplementary element to the right of deduction, works as an instrument to ensure tax neutrality for economic operators. It is shown here that, although still present a series of critical, you can still be inferred by the rules outlined in terms of excess tax credits, an address of the legislature towards simplification and reduction of time for repayment of the sums, always putting but particular attention to the need to verify the existence of credit. In this sense, the introduction of tools that can simplify the collection of controls financial administration should also result in further reduction of the delay.

The third chapter, whereas the hypothesis of generalization of the reverse charge is assessed to introduce an effective instrument against tax fraud, will provide an overview of the size of the phenomenon fraudulent firstly in its geographical and quantitative size. The analysis of them allows us to narrow down the main factors affecting the tax fraud to the following:

1. the declaration of fictitious intra-Community supplies, in which the exempted goods are actually sold on the domestic market by producing a fraud due on final consumption, to the detriment of the state of the seller;

2. Carousel fraud, with the entry of a person missing traders within the production-distribution chain of the property, collecting the tax from its customers charged on their sales and disappears without paying the tax, instead of causing damage to the State buyer.

It should be noted, moreover, as in most cases, these phenomena are structured and controlled by organized criminals, against whom the sanctions provided for in current legislation are ineffective in their role of deterrence. It is therefore preferable to the adoption of instruments aimed at eliminating the upstream edge of the underlying tax fraud. It also points out the limitations of the current rule to extend the responsibilities between the different actors of the fraud and the risk also take action against individuals unwittingly placed in the carousel. The finding that the phenomenon of tax fraud is being expanded and the limits of the discipline necessary to suggest an intervention to change the system and make it robust against fraud themselves.

The proposals that have been expressed in the fourth chapter acting in this direction and aim to provide a general contribution to the ongoing debate, the present work, in fact, aware that it is not exhaustive of the various issues raised with regard to VAT, will deliver an additional views on possible solutions to the problem. The elements that form the basis of the model proposed for the collection are represented by the abolition of the economic benefit a foundation of fraud and to safeguard the principle of fractional collection of the tax. In this sense it is satisfied the conditions of a generalized reverse charge model, with the actual event financial transaction tax paid by the Treasury by the transferee. The evaluation of the proposed model can not, however, regardless of the impact that its application would generate the positions of the parties involved, ie the tax authorities and taxpayers. It is shown that the main criticism to this model is found in the creation of a structural asset position in

the economic operators providing an additional financial burden in the hands of the same. However, in the opinion of the writer, that disadvantage would be adequately compensated by the savings that traders would achieve a result is greater clarity about the rules that the simplification of administrative burdens. The benefits of such a system would therefore undeniable, both the state and for economic actors. The first would get a robust system that would eliminate the risk of fraud upstream and at the same time retain the split payment of the tax that allows anticipation of the tax, not going to affect the finances of the Member States.

For market players, however, as already noted, the penalty resulting from the credit position would assume that would be offset by the sharp reduction of administrative burdens which, thanks to innovations in technology, could easily be managed in electronic form and by the simplification of the system that would 'zeroing of chance of uncertainty that exists today on the practical application of the rules in certain cases, also generating additional costs for taxpayers.

With regard to reimbursement procedures, the current schedule, that after the new law should be equal to a period between 4 and 8 months, is essentially due to the need for reimbursement of the State to carry out related checks. If the hypothesized model's refund would be provided exclusively by their State of establishment, having no need to make further checks because it would have the certainty of the prior payment of the tax due, may deliver the money refunded very quickly, it could be in crediting the amounts in near real time.



The fifth chapter, then, is to provide an overview absolutely partial about the experience of some federal states in the application of VAT. It first considered the German model of taxation and tax allocation among the Lander, considered by some stretch to the European context. Among the federal states, Canada is a laboratory where different models were applied to the tax, providing significant insights into the distribution of powers between the two levels of government. Then you do a brief overview of the Brazilian tax system differs from others mainly to be almost the only country that has introduced the principle of taxation at source. Finally, we made a brief reference to the ongoing debate in the United States on the possible introduction of VAT in federal emphasize that this tax could frame within the most industrialized economy in the world. From these experiences can be made essentially three points:

1. neither the experience of Germany and that of Canada in the provinces that have adopted the HST show how the tax works well when the management is centralized in the hands of the federal government level;

2. Brazil's experience shows that even in the presence of the principle of taxation at the origin, are still elusive phenomena and products primarily in fraudulent transactions between States;

3. U.S. scientists have shown that the vat, in order to function properly, must be applied at the federal level and according to the principle of taxation in the country of destination.

In conclusion, given the need to intervene effectively with enforcement actions against fraud and places the limitations of the reverse charge model of insurance of this target in the medium term, this work provides an original contribution that aims to examine the issue from another point of view, considering bearable by traders abandoning the principle of immediacy of the right of deduction in respect of a number of advantages in simplifying and reducing the burden placed against them. The effectiveness of the system would, however, subject to the simultaneous implementation of tools for electronic invoicing and splitting of payments described in the fourth chapter and the consequent reduction of time for repayment of tax credits. It is noted, finally, how such a system was compatible with both the hypothesis of introduction of a VAT regime for cash, the assumption of a VAT is applied only in B2B transactions with the application instead of a retail sales tax on transactions B2C.