

Of counsel

Dott. Sandro Guarnieri

Dott. Marco Guarnieri

Dott. Corrado Baldini

Dott. Paolo Fantuzzi

Dott.ssa Sara Redeghieri

Dott.ssa Beatrice Cocconcelli

Dott.ssa Veronica Praudi

Dott.ssa Federica Lusenti

Dott. Andrea Friggeri

Dott.ssa Katia Borghi

Dott. Matteo Giovannini

Dott.ssa Nunzia Riviaccio

Avv. Francesca Palladi

To whom it may concern

Reggio Emilia, March 04, 2026

MEMORANDUM N. 22/2026

Insight

Subject: Decreases in VAT for institutions governed by the Business Crisis and Insolvency Code

1 PREMISE

Article 18 of Decree-Law No. 73 of May 25, 2021 (known as the “Sostegni-bis Decree,” or “Decree-Law 73/2021” for short), converted with amendments by Law No. 106 of July 23, 2021, No. 106, introduced substantial changes to the rules governing reductions in VAT taxable amounts or tax due, pursuant to Article 26 of Presidential Decree No. 633/72, stipulating that, in the event of non-payment of the consideration related to insolvency proceedings, it is no longer necessary to wait for the conclusion of such proceedings.

However, the new rules apply to proceedings initiated on or after May 26, 2021, the date of entry into force of the Sostegni-bis Decree, while the previous rules continue to apply to pre-existing proceedings.

2 REGULATIONS APPLICABLE BEFORE MAY 26, 2021

With reference to procedures opened before May 26, 2021, in order to recover unpaid VAT, it is still necessary to wait for the conditions set out in the “old” rules of Article 26 of Presidential Decree 633/72, in force prior to the amendments introduced by the aforementioned Decree Law 73/2021, to be met: according to these rules, the creditor has the right to proceed with a downward adjustment in order to recover the tax paid to the tax authorities but not collected, without any time limit. However, in the event of bankruptcy, this is only possible after the asset distribution plan has become final. Alternatively, in the absence of distribution, at the expiry of the deadline for appealing against the bankruptcy closure decree.

With regard to the composition with creditors, “the right to variation is subject to the ‘fruitlessness’ of the procedure, because only when this condition is met is there reasonable certainty that the debtor’s assets are insufficient. In this specific case, the Ministry of Finance and, more recently, the Revenue Agency have considered that the procedure can only be considered unsuccessful for unsecured creditors for the percentage of their claim that is not accepted upon closure of the arrangement. In order to ascertain the aforementioned failure, it

SGB & Partners

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail info@sgbstudio.it

Web www.sgbstudio.it

is necessary to take into account not only the final approval ruling (Article 181 of the Bankruptcy Law), but also the moment when the debtor fulfills the obligations assumed in the composition agreement. Until that date, in fact, the composition agreement may be terminated and bankruptcy may be declared.

For all these “pending proceedings,” it is still necessary to wait for their conclusion and the decree pursuant to Article 119 of the Bankruptcy Law.

3 NEW PROVISIONS INTRODUCED BY DECREE LAW 73/2021 FOR PROCEDURES INITIATED FROM 26 MAY 2021

The new paragraph 3-bis – introduced into Article 26 of the VAT Decree by Article 18, paragraph 1, letter b) of the Sostegni-bis Decree – provides that the cases in which the supplier of the goods or services may make downward adjustments to the taxable amount and the resulting tax, with reference to transactions for which they have already issued an invoice charging VAT, also applies in the event of non-payment of the consideration, in whole or in part, by the transferee or customer:

- for insolvency proceedings, debt restructuring agreements referred to in Article 182-bis of the Bankruptcy Law (now Article 57 CCII) and plans certified pursuant to Article 67, paragraph 3, letter d) of the same Bankruptcy Law (letter a) (now Article 56 CCII);
- for individual enforcement proceedings that have been unsuccessful (letter b).

The same paragraph 3-bis also identifies, with reference to the procedures referred to in letter a), the date from which the change may be made.

More specifically, if the failure to pay is due to the debtor being subject to insolvency proceedings, the resulting change may be made from the date of commencement of the insolvency proceedings (without therefore awaiting the outcome), i.e. the date:

- the judgment declaring bankruptcy/judicial liquidation;
- the order for compulsory administrative liquidation;
- the decree admitting the procedure for an arrangement with creditors pursuant to Article 47 of the CCI;
- the decree ordering the extraordinary administration procedure for large companies in crisis.

With regard to other crisis management tools, it should be noted that, pursuant to the same paragraph 3-bis, this right may be exercised from the date of the decree approving a debt restructuring agreement pursuant to Article 48 of the CCII, or from the date of publication in the register of companies of a plan certified pursuant to Article 56 of the CCII. In the event of failure to register the plan with the Chamber of Commerce, the provisions of paragraph 3 of the aforementioned Article 26 shall apply, relating to agreements between the parties, which make the recovery of VAT subject to the condition that one year has not already elapsed since the transaction was carried out, otherwise only a credit note ‘outside the scope of VAT’ may be issued. It is understood that the reduction in VAT must refer only to the part of the credit that will remain unsatisfied in the access decree (preliminary agreement), in the approval ruling (restructuring agreement), or in the recovery plan.

SGB & Partners

Sede legale
Via Meuccio Ruini, 10
42124 Reggio Emilia
CF e Piva 01180810358

Tel. +39 0522 941069
Fax +39 0522 941885
Mail info@sgbstudio.it
Web www.sgbstudio.it

With regard to the negotiated settlement of the crisis, creditors are now able to reduce VAT from the date of publication of the contracts (pursuant to Article 23, paragraph 1, letter a) of the CCII) or agreements (pursuant to Article 23, paragraph 1, letter c) of the CCII) in the register of companies. CCII) that successfully conclude this out-of-court process; conversely, if it is found that it is impossible to restructure the company through an agreement between the parties, and the company in crisis decides to pursue a simplified composition procedure, the date to be taken as a reference for the issuance of the variation note is that of the decree provided for in paragraph 4 of Article 25-sexies CCII, i.e., the measure that, in fact, opens the procedure, appoints the auxiliary, and sets the disclosure obligations to creditors and the date of approval.

4 DEADLINE FOR TAX DEDUCTION

According to Italian Revenue Agency Circular No. 20/E of December 29, 2021, which examines the issue of VAT recovery on uncollected credits in insolvency proceedings following the amendments introduced by Article 18 of Decree-Law No. 73 of May 25, 2021, the date by which the right to deduction must be exercised is the date of the periodic VAT settlement for the month or quarter in which the note is issued or, at the latest, when the VAT return for the year in which the note is issued is filed.

For further clarification, an explanatory example is provided below:

- November 30, 2024: following the sale of an asset, the transferor (creditor) issues an invoice for taxable transactions amounting to €45,000 and tax amounting to €9,900, which are not paid by the transferee (debtor);
- January 10, 2025: judgment declaring the judicial liquidation of the debtor;
- January 10, 2025: start of the period from which the downward adjustment note can be issued;
- the creditor issues a downward adjustment note for € -45,000 and tax for € -9,900;

Hypothesis 1: the creditor issues the variation note in 2025:

the right to deduction can be exercised at the latest when submitting the VAT return for 2025 (to be submitted by April 30, 2026); as a result, the creditor reduces the tax payable by €9,900.

Hypothesis 2: the creditor issues the variation note within the first four months of 2026 (deadline for submitting the VAT return for 2025):

in this case, the right to deduction can be exercised in the periodic settlement for the month/quarter of issue or, at the latest, in the VAT return for 2026 (April 30, 2027); as a result, the creditor reduces the tax payable by €9,900.

In short, according to the Revenue Agency:

- the date from which a credit note can be issued is the date on which the transferee is subject to the procedure;
- the date by which the credit note can be issued coincides with the deadline for submitting the VAT return for the year in which the procedure is opened;

SGB & Partners

Sede legale
Via Meuccio Ruini, 10
42124 Reggio Emilia
CF e Piva 01180810358

Tel. +39 0522 941069
Fax +39 0522 941885
Mail info@sgbstudio.it
Web www.sgbstudio.it

- this credit note may be taken into account in the periodic settlements for the year in which it was issued (starting from the month or quarter of issue) and, at the latest, in the annual tax return for that year.

The circular also specifies that, in accordance with the new wording of the regulation, the issuance of the credit note – and, consequently, the deduction of the uncollected tax – is not precluded even for creditors who have not filed a claim in the proceedings.

If the deadline for issuing the credit note to recover the tax paid at the time has expired, the aforementioned circular (paragraph 6) provides that exceeding the time limit set by the legislator for exercising the right to deduction does not generally imply that the recovery of the undeducted tax can take place, alternatively, by submitting, at a later stage, a supplementary return in favor containing the tax reduction not applied, or a request for a refund pursuant to Article 30-ter of Presidential Decree 633/72.

However, with regard to the possibility of submitting a supplementary tax return in favor, the same practice document stated that this remedy would not be possible to recover the tax paid, where there are no errors or omissions to be remedied, which are prerequisites for submitting a supplementary tax return in favor. with regard to reimbursement, it is specified that this option is only feasible in the presence of objective conditions that prevented the issuance of the downward adjustment note, thus precluding the exercise of the right to deduction.

5. DECREASE IN INSOLVENCY PROCEEDINGS FOR TAXABLE INCOME AND VAT

According to the tax authorities, the change cannot refer solely to VAT, as it must relate to the consideration not collected by the transferor or service provider and, therefore, must be issued with reference to both the taxable amount and the corresponding tax. This aspect was confirmed by the Revenue Agency in its response to request for ruling no. 485 of October 3, 2022, which reiterates the previous resolution no. 127 of April 3, 2008.

The same rate as the original invoice must be applied to the downward adjustment, even if the rate has changed; the notes must be numbered progressively and a special section may be used. It is also important to specify the invoice to which the note refers.

The documents must be prepared in XML format (using document type “TD04”) and sent to the Interchange System. It is possible to formalize the document in simplified form regardless of the amount, but in this case, the XLM file must be prepared using document type “TD08.” The identification of the previously issued and sent invoice to be corrected is required in field 2.1.6 in the case of ‘TD04’ and in block 2.1.2 in the case of “TD08.”

6. FINALITY OF THE PROCEDURE. FURTHER CHANGE (INCREASE)

The new paragraph 5-bis of Article 26 of Presidential Decree No. 633 of 1972 – introduced by Article 18, paragraph 1, letter d) of the Sostegni-bis Decree – provides that “in the event that, following the events referred to in paragraph 3-bis,” and therefore following the issuance of the downward adjustment note, “the consideration is paid, in whole or in part, the provision referred to in paragraph 1

SGB & Partners

Sede legale
Via Meuccio Ruini, 10
42124 Reggio Emilia
CF e Piva 01180810358

Tel. +39 0522 941069
Fax +39 0522 941885
Mail info@sgbstudio.it
Web www.sgbstudio.it

shall apply,” i.e., the obligation to issue an upward adjustment note. “In this case, the transferee or customer who has fulfilled the obligation referred to in paragraph 5 shall be entitled to deduct the tax corresponding to the upward adjustment pursuant to Article 19.”

Following the explanatory example of judicial liquidation set out above, we can further hypothesize:

- June 10, 2027: definition of the distribution plan for the debtor's bankruptcy/judicial liquidation procedure, which provides for partial payment to the creditor of the agreed consideration, for a total amount of €30,000, i.e., for an amount greater than that adjusted downward;
- June 18, 2027: payment of the consideration as per the distribution plan;
- June 30, 2027: deadline for issuing the upward adjustment note pursuant to paragraph 5-bis; the creditor issues an upward adjustment note for €24,590 in taxable income and €5,410 in tax;
- July 16, 2027: deadline for the June 2027 settlement (for monthly taxpayers), to which the tax relating to the upward adjustment note must be added, i.e., a tax liability of €5,410; or
- August 20, 2027: deadline for the second quarter 2027 settlement (for quarterly taxpayers), to which the tax relating to the upward adjustment note must be added, i.e., a tax liability of €5,410.

Below is a comparison between the provisions before and after the amendments introduced by Decree Law 73/2021.

Article 26 of Presidential Decree 633/72 prior to Decree Law 73/2021	Applicable to procedures initiated before May 26, 2021	Article 26 of Presidential Decree 633/72 following Decree Law 73/2021	Applicable to procedures initiated on or after May 26, 2021
Decrease in VAT in insolvency proceedings.	The variation is subject to non-payment in whole or in part due to insolvency proceedings or individual enforcement proceedings that have been unsuccessful.	Decrease in VAT in insolvency proceedings.	The change may be made from the date on which the transferee/customer is subject to insolvency proceedings. For the instruments referred to in paragraph 10-bis of Article 26 of Presidential Decree 633/72, reference should be made to:

SGB & Partners

Sede legale
Via Meuccio Ruini, 10
42124 Reggio Emilia
CF e Piva 01180810358

Tel. +39 0522 941069
Fax +39 0522 941885
Mail info@sgbstudio.it
Web www.sgbstudio.it

	<p>It is therefore necessary to wait:</p> <p>FOR BANKRUPTCY the deadline for filing a complaint against 1) the asset distribution plan, or alternatively 2) the decree closing the bankruptcy proceedings;</p> <p>FOR THE BANKRUPTCY AGREEMENTil the final judgment approving the agreement;</p> <p>FOR THE PREVENTIVE AGREEMENT the final judgment of approval;</p> <p>FOR THE RECOVERY PLAN publication in the register of companies or one year after the transaction has been carried out (Article 6 of Presidential Decree 633/72).</p>		<p>FOR BANKRUPTCY/JUDICIAL LIQUIDATION to the judgment declaring bankruptcy/judicial liquidation;</p> <p>FOR COMPULSORY ADMINISTRATIVE LIQUIDATION to the order for liquidation;</p> <p>FOR THE EXTRAORDINARY ADMINISTRATION PROCEDURE OF LARGE COMPANIES IN CRISIS to the decree establishing the extraordinary administration procedure;</p> <p>FOR THE PREVENTIVE AGREEMENT to the decree of admission to the procedure.</p> <p>Circular No. 20/E/2021 issued by the Italian Revenue Agency clarified that the downward adjustment is not precluded by the creditor's claim for inclusion in the list of creditors.</p> <p>In the event of subsequent full or partial payment, the creditor must make an upward adjustment (paragraph 5-bis of</p>
--	--	--	---

SGB & Partners

Sede legale
Via Meuccio Ruini, 10
42124 Reggio Emilia
CF e Piva 01180810358

Tel. +39 0522 941069
Fax +39 0522 941885
Mail info@sgbstudio.it
Web www.sgbstudio.it

			<p>Article 26 of Presidential Decree No. 633/72).</p> <p>In the event of subsequent full or partial payment, the creditor must make an upward adjustment (paragraph 5-bis, Article 26 of Presidential Decree 633/72).</p>
--	--	--	---

The Firm remains available for any clarification.

SGB & Partners – Commercialisti

SGB & Partners

Sede legale
Via Meuccio Ruini, 10
42124 Reggio Emilia
CF e Piva 01180810358

Tel. +39 0522 941069
Fax +39 0522 941885
Mail info@sgbstudio.it
Web www.sgbstudio.it