

To whom it may concern

Of counsel
Dott. Sandro Guarnieri

Dott. Marco Guarnieri
Dott. Corrado Baldini
Dott. Paolo Fantuzzi

Dott.ssa Clementina Mercati
Dott.ssa Sara Redeghieri
Dott.ssa Beatrice Cocconcelli
Dott. Daniele Pecora
Dott.ssa Veronica Praudi
Dott.ssa Federica Lusenti
Dott. Andrea Friggeri
Dott.ssa Martina Carobbi
Dott. Matteo Giovannini

Avv. Francesca Palladi

Reggio Emilia, Dec. 2, 2024

MEMORANDUM N. 46/2024

Insight

Subject: The tax regime of gifts - Income tax, IRAP and VAT

The granting of gifts by businesses is a usual occurrence, especially on holidays and anniversaries.

The main aspects of the tax regime of such transfers are summarized below in the area of income tax, IRAP and VAT.

1. CUSTOMERS GIFTS

1.1 Income taxes

In general, charges incurred for gifts distributed to customers are deductible:

- a. entirely, if the unit value of the complimentary goods intended for the same person does not exceed 50.00 euros (these must be goods and not services);
- b. in the year in which the expense is incurred in compliance with the percentage limits provided for in Article 108 paragraph 2 of the TUIR for entertainment expenses, if the unit value of the free gift exceeds 50.00 euros or services or securities representing the same are given as gifts (e.g., passes to enter the cinema, carnet for wellness center), as they fall within the so-called "entertainment expenses".

Representation expenses are deductible to the extent of:

- a. to 1.5 percent of revenues and other income up to 10 million euros;
- b. to 0.6% of revenues and other income for the portion exceeding 10 million euros and up to 50 million euros;
- c. to 0.4 percent of revenues and other income for the portion exceeding 50 million euros.

That being said, in order to determine the "unit value" of the gift

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

delivered, reference should be made:

- to the gift as a whole (e.g., Christmas basket), and not to the individual goods comprising it;
- to the market value of the good.

Goods falling within the enterprise's own activity

For goods self-produced by the enterprise (goods to the design, production and marketing of which the activity of the enterprise is directed):

- in order to identify the entertainment expenses to be subject to the limited deductibility regime, the market value of the gift is relevant;
- once the expense is qualified as entertainment (if, therefore, the market value is greater than 50.00 euros), for the purpose of calculating the deductibility limit concurs instead, in full, the cost of production actually incurred by the enterprise, regardless of whether the same is less than 50.00 euros or not.

For example, in the case where the self-produced gift has a market value of 80.00 euro and a production cost of 40.00 euro:

- the free gift constitutes an entertainment expense to be subject to verification of the deductibility limit (market value exceeding the 50.00 euro limit);
- for the purpose of calculating the deductibility ceiling, the amount of 40.00 euros, i.e. the actual production cost, is relevant.

In the event that the normal value of the self-produced free gift is less than or equal to 50.00 euros, the cost actually incurred for the production benefits from the full deduction. Therefore, for example, if the self-produced free gift has a market value of 40.00 euros and a production cost of 30.00 euros, the free gift is fully deductible for 30.00 euros.

1.2 IRAP

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

1.2.1 IRES persons and IRPEF persons who have opted for the budget regime

Article 1 paragraph 50 of Law 244/2007 repealed Article 11-bis of Legislative Decree 446/97, according to which income and expenses that contribute to the determination of the IRAP taxable base must be assumed by making the upward or downward changes to them provided for direct tax purposes.

For corporations and business entities, this circumstance implies that, with certain exceptions, the relevant income components

contribute to the determination of net production value in the amount allocated to the income statement.

Therefore, entertainment expenses, including those for gifts, are deductible in the amount allocated in the income statement given that they are charges properly classifiable under a relevant item for IRAP purposes.

This deductibility scheme for IRAP purposes is allowed:

- as well as for IRES subjects;
- also for IRPEF subjects who, meeting the conditions, have opted for the regime of determining the taxable base on the basis of the financial statements.

1.2.2 IRPEF persons who have not opted for the budget regime

For sole proprietors and partnerships that have not opted for the balance sheet regime, gifts are not deductible. For such individuals, in fact, Article 5-bis of Legislative Decree No. 446/97 listed a list of deductible costs among which miscellaneous operating expenses are not mentioned, an item under which, according to the classification of the balance sheet by nature, gifts fall.

However, according to the instructions to the tax return, the nondeductibility would be limited to gifts exceeding 50.00 euros (falling under entertainment expenses).

1.3 IVA

1.3.1 Assets outside the enterprise's own business

From the coordination between Art. 2 co. 2 no. 4 of Presidential Decree 633/72 and the subsequent Art. 19-bis1 co. 1 lett. h) it follows that, for goods that are not part of the business's own activity, the free supply is always excluded from VAT.

In fact, Art. 19-bis1 co. 1 lett. h) of Presidential Decree 633/72 provides that VAT paid on goods and services that give rise to expenses that qualify as entertainment for income tax purposes is non-deductible, which includes free gifts, except for goods with a unit cost not exceeding 50 euros.

Therefore, gifts of goods that are not part of the business' own activity never constitute a VAT-taxable supply:

- because they involve goods with a unit cost not exceeding 50 euros;
- or because, although they have a unit cost exceeding 50 euros, they involve goods for which the tax paid on the purchase is not deductible.

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

VAT on the purchase of these goods is (Article 19-bis1, first paragraph, letter h) Presidential Decree 633/1972):

- deductible, if the goods have a unit value not exceeding 50.00 euros;
- non-deductible if the unit value of the goods exceeds 50.00 euros.

1.3.2 Goods falling within the enterprise's own activity

- a. Free supplies of goods within the business' own activity are subject to VAT regardless of the cost or value of the goods (Article 2, second paragraph, No. 4 Presidential Decree 633/1972).
- b. Therefore, VAT on the purchase of such goods is always deductible.
- c. If there is a gratuitous supply, the taxable base is the cost of purchase or production.
- d. According to Article 18, third paragraph, of Presidential Decree 633/1972, for free supplies, VAT reclaim is not mandatory.

Generally and appropriately, VAT recourse against the customer is not made and, therefore, the tax remains the responsibility of the transferor, constituting for him a non-deductible cost under Article 99, first paragraph of the TUIR. In the absence of recourse, the transaction may be certified, alternatively:

- by issuing, in a single copy, a self-bill indicating the purchase price of the goods, the applicable rate and the relevant tax, also specifying that it is a "gift auobill." This document, which must be recorded in the VAT sales register, may be issued individually for each supply, or monthly for all supplies made in the month;
 - by noting, on a special "register of free gifts," the total amount of the purchase prices of the goods supplied free of charge, referring to the supplies made on each day, distinguished by rate.
- e. Self-invoices for gifts must be issued electronically in accordance with Article 1 paragraph 3 of Legislative Decree 127/2015:
 - - by reporting the data of the transferor/provider in both the "Transferor/Provider Data" and "Transferee/Purchaser Data" sections;
 - - indicating "TD27" in the "document type" field.
 - f. VAT not charged on a reverse charge basis is nondeductible

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

for income tax purposes.

- g. **FREE SAMPLES:** free supplies of samples are excluded from VAT:
- of modest value;
 - specially marked, in an indelible manner; the obligation can also be properly discharged by affixing a label, although removable, on the goods or the wrapping containing them; which take place “to promote the good in order to improve its knowledge and dissemination among current and potential users.”

1.3.3 Gifts sent abroad

If goods given free of charge are sent outside the territory of the state, the VAT rules differ depending on whether the country of final destination belongs to the European Union or not.

1.3.3.1 Free transfers of goods to EU countries

Free gifts sent to another member country of the European Union do not give rise to an intra-Community supply under Article 41 of Decree-Law No. 331/1993, as one of the essential requirements for the transaction to qualify as intra-Community-and therefore subject to VAT in the member country of destination-is the onerous title. Consequently, the domestic regulations seen in the preceding paragraphs apply to such transactions.

1.3.3.2 Free supplies of goods to non-EU countries

VAT-liable gratuitous supplies of goods made to residents in non-EU countries constitute nontaxable export supplies under Article 8(a) and (b) of Presidential Decree No. 633/72, with the obligation to issue an invoice. The onerousness of the transaction is not a qualifying element of exports for VAT purposes, so, unlike in the EU, not only onerous supplies but also free supplies fall under the nontaxable regime.

For the application of nontaxability, it is obviously necessary for the donor company to be able to prove the exit of goods from the EU.

If the gratuitous supply does not fall within the scope of VAT (for example: free gifts of goods not produced or marketed by the enterprise; free samples of modest value specially marked), the issuance of an actual invoice can be avoided, as a pro forma invoice (or valorized list) will suffice to complete customs formalities.

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

Export supplies made free of charge, while constituting nontaxable exports, are excluded, due to the lack of consideration, for the purpose of calculating the regular exporters' plafond.

2. GIFTS TO EMPLOYEES

2.1 Income taxes

2.1.1 Deductibility for the employer

In determining business income, the cost of gifts intended for employees is deductible in accordance with Article 95, Paragraph 1 of the TUIR, according to which expenses incurred in cash/nature as gifts to employees are also included among expenses for work services.

2.1.2 Taxability for the employee

Pursuant to Article 51, Paragraph 3 of the TUIR, in order to verify the taxability to the employee of liberal donations, it is necessary to distinguish according to whether they are in cash or in kind.

a. Liberal cash donations

Always contribute to the employee's income.

b. Liberal donations in kind

Goods given and services provided free of charge to employees do not contribute to income if the total amount does not exceed 258.23 euros during the tax period. If the value is higher, it contributes entirely to income.

Limited to the 2024 tax period, the amount of 258.23 euros is increased to 1,000 euros by including in this amount the amounts paid or reimbursed to employees by employers for the payment of household utilities (water, electricity and gas), expenses for the rent of the first home or for interest on the mortgage related to the first home (Article 1, paragraph 16, of Law No. 213 of Dec. 30, 2023).

The limit is raised to 2,000 euros for employees with children who are tax dependent as of Dec. 31, 2024.

The limit of 1,000 or 2,000 euros applies if the employee declares to the employer that he/she is entitled to it, indicating the tax code of the children.

2.2 IRAP

Gifts to employees fall under personnel costs and, therefore, are nondeductible for IRAP purposes unless they fall under the deduction for residual personnel cost (example for permanent employees).

For IRPEF entities that have not opted to determine the taxable base on the basis of financial statements, gifts to employees are nondeductible for IRAP purposes, since the related purchase costs are not mentioned among those

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

deductible under Article 5-bis of Legislative Decree No. 446/97, unless they are intended for employees for whom analytical deductibility of the related costs is established (e.g., permanent employees).

2.3 IVA

2.3.1 Goods within the business' own activity

VAT is deductible on purchases and the free supply is taxable.

2.3.2 Goods outside the enterprise's own activity

They are not considered goods pertaining to the company's own business activity, therefore the related VAT is non-deductible and, consequently, their free supply is excluded from VAT pursuant to Article 2, second paragraph, no. 4 and 19bis1, paragraph 1, letter h) of Presidential Decree 633/1972.

3. GRANTING OF “PURCHASE VOUCHERS” (VOUCHERS)

It is now common practice to grant free gifts also in the form of “purchase vouchers” (*vouchers*), which allow the purchase of goods/services in affiliated establishments.

3.1 VAT treatment

The VAT rules applicable to the issuance, transfer and redemption of *vouchers* were reformed by Legislative Decree No. 141, Nov. 29, 2018, in order to implement the changes introduced by Directive 2016/1065/EU. The new provisions apply to vouchers issued after Dec. 31, 2018.

Under the new regulations, vouchers (or “consideration vouchers”) are defined as instruments that contain the obligation to be accepted as consideration or partial consideration for a supply of goods or services and that bear on the medium used or related documentation the information necessary to identify the goods or services to be transferred or provided or the identities of the potential transferors or providers, including the general conditions of use of such vouchers.

In addition, in the new regulations, a distinction is made between:

- “Single-purpose” vouchers, if at the time of issuance all the elements that make it possible to determine the VAT treatment applicable to the underlying transaction (e.g. nature, quality, quantity of the goods or services supplied) are already known. In this case, the supply of goods or services to which the “single-purpose” voucher entitles is deemed to be made at the time of issuance of the voucher, as well as at the time of each transfer thereof prior to its use;
- “multi-purpose” vouchers, if the discipline applicable, for VAT

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

purposes, to the supply of goods or services to which the voucher-consideration entitles is not known at the time of its issuance (e.g., because it is possible to use the voucher at a retailer who transfers goods subject to different VAT rates).

In such a case, the transaction is considered to have taken place only when the voucher is used, giving rise to a supply of goods or a supply of services (the chargeability of the tax arises, therefore, according to the ordinary rules of Article 6 of Presidential Decree 633/72).

3.2 Treatment for direct tax purposes

The deductibility of expenses incurred for the purchase of vouchers that businesses give away to their customers follows the treatment of entertainment expenses.

In cases where vouchers are given to employees, the vouchers constitute fringe benefits for employees by effect of paragraph 3-bis of Article 51 of the TUIR and, therefore, are not taxed as explained in paragraph 2.1.2 above, while the related costs are deductible for the employer.

4. CHRISTMAS BUFFET/LUNCH/DINNERS

- a. Since this is the provision of food and beverages, these expenses are deductible to the extent of 75% in accordance with Article 109, Paragraph 5 of the TUIR.
- b. If the initiative is aimed only at employees (and, it is believed, their family members), since it has no promotional purpose it does not represent a representation expense, but falls under the so-called social benefit charges (expenses incurred towards the generality of employees or categories of employees for purposes of education, education, recreation, etc.) deductible to the limit of 5 per thousand of the cost of labor.

Thus, expenses for dinners and lunches addressed to employees and their family members are deductible to the extent of 75 percent within the limit of 5 per thousand of labor costs.

- c. If, on the other hand, the lunch or dinner is also or only addressed to other parties (customers, suppliers, institutions, etc.), the related cost is in the nature of entertainment expenses and, therefore, is deductible to the extent of 75% within the limit provided for entertainment expenses:
 - 1.5% of revenues and other income up to 10 million euros;
 - 0.6% of revenues and other income for the portion exceeding 10 million euros and up to 50 million euros;
 - 0.4% of revenues and other income for the part exceeding 50 million euros.

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

- d. For IRAP purposes:
- the cost is nondeductible if the lunch or dinner is provided only to employees unless it falls under the deduction for residual personnel cost (example for permanent employees);
 - if the lunch or dinner is offered only or also to other persons, the cost is deductible by IRES or IRPEF persons who have opted for the balance sheet method, while it is nondeductible for IRPEF persons who apply the tax method.
- e. VAT is always non-deductible since these are expenses considered not inherent to the activity.

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