



Italy: Amendments to 'bad debt relief' VAT rules

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Decree Law no. 73 (the 'Sostegni-bis Decree Law'), published on 25 May 2021 in the Official Gazette and effective as of 26 May 2021, introduces the possibility of claiming 'bad debt VAT relief' at the beginning of insolvency proceedings without waiting for their conclusion.

Amendments to 'bad debt relief' VAT rules

'Old' position

Based on the 'old' Italian rules, a supplier was entitled to adjust output VAT by issuing credit notes "... in the event of total or partial non-payment due to bankruptcy or insolvency proceedings ...". The time at which it was possible to claim bad debt relief varied according to the kind of proceedings the debtor was involved in. In principle:

- in the case of customer insolvency, VAT recovery was possible only when foreclosure proceedings were unsuccessful;
- in the case of bankruptcy or similar insolvency proceedings, VAT could only be recovered at the end of the proceedings.

The fact that output VAT not paid by customers involved in bankruptcy and similar proceedings was recoverable only **at the end** of the proceedings was contrary to the position expressed by the ECJ in its judgment of 23 November 2017, in Case C-246/16 (Di Maura), where it was pointed out that "a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful when such proceedings may last longer than ten years" (making specific reference to the Italian system, which appears to conflict with the VAT Directive).

The 'new' rules

Under the Sostegni-bis Decree Law, output VAT charged on supplies to customers involved in bankruptcy and similar proceedings will be recoverable (by means of credit notes) **from the beginning** of the proceedings. It will no longer be necessary to wait until the end.

In particular, the supplier will be entitled to issue a credit note to 'recover' the unpaid output VAT from the date when a customer becomes subject to insolvency or bankruptcy proceedings. A customer is 'subject to proceedings' from the date on which the bankruptcy judgment becomes enforceable, or the judge orders the liquidation of the debtor's assets, or the debtor enters into a creditor composition agreement ('*concordato*'), or the debtor goes into special administration.

In addition, the *Sostegni-bis* Decree Law establishes that:

- a customer involved in insolvency or bankruptcy proceedings does not have to adjust its VAT position upon receiving the credit note from the supplier;
- if the customer later settles the debt, the supplier should rectify its VAT position by issuing a new debit note to account for the VAT.

The new rules will apply to bankruptcy and similar proceedings starting after the entry into force of the *Sostegni-bis* Decree Law, and thus from 26 May 2021 onwards.

Annual limit for the offsetting of VAT credits

For fiscal year 20 21 only, the VAT credit that can be offset against other taxes and contributions, or claimed as a refund through the fast-track procedure, is capped at EUR2,000,000 (currently EUR700,000).

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