



Italy: reform of the tax penalty system – VAT

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Office

Milan

Via Vittor Pisani 31, 20124
T: +39 02 676441

Ancona

Via I° Maggio 150/a, 60131
T: +39 071 2916378

Bologna

Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711

Florence

Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961

Genoa

P.zza della Vittoria 15/12, 16121
T: +39 010 5702225

Naples

Via F. Caracciolo 17, 80122
T: +39 081 662617

Padua

Piazza Salvemini 2, 35131
T: +39 049 8239611

Perugia

Via Campo di Marte 19, 06124
T: +39 075 5734518

Pescara

P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479

Rome

Via Curtatone 3, 00185
T: +39 06 809631

Turin

C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166

Verona

Via Leone Pancaldo 68, 37138
T: +39 045 8114111

Legislative Decree no. 87/2024, (the “Decree”), published on 28 June 2024 in the Official Gazette, introduces important changes to the Italian tax penalty system. The Decree entered into force on the day after its publication in the Official Gazette but will apply to violations committed **from 1 September 2024**¹.

Summarized below are the main changes to VAT penalties.

New penalties for intra-Community supplies of goods

According to article 2(1)(e) of the Decree, Italian VAT persons “who make zero-rated supply of goods under article 41 of Decree Law no. 331/1993 (intra-EU supplies) will be subject to an administrative penalty of 50 percent of the VAT if the goods are transported to another Member State by the buyer, or by third parties on its behalf, and the goods do not arrive in that Member State within 90 days of their delivery in Italy to the buyer. The penalty will not apply if, within 30 days of the initial 90-day deadline, the invoice is corrected, and the VAT is remitted to the Treasury.

Therefore, to avoid the penalty, Italian VAT persons should, within 30 days of the expiry of the 90-day deadline – if no evidence has been obtained that the goods have arrived in the Member State of destination – charge Italian VAT to the buyer and remit that VAT to the Treasury.

Pending clarifications from the Italian Revenue Agency, it is unclear how the 90-day rule will apply to violations committed from 1 September 2024.

Therefore, further clarifications from the Italian Revenue Agency are expected.

Changes to the self-disclosure procedure

The self-disclosure procedure - i.e. the possibility for taxpayers to correct fiscal years still open to assessment, thereby benefitting from a significant reduction in penalties² - will be more advantageous for violations committed from 1 September 2024, for two main reasons:

- It will be possible to use the “juridical aggregation” mechanism³, separately for each tax and for each fiscal year⁴, except for violations involving omitted payments and undue offsetting.
- There will be the following reductions on the applicable penalties

Article 13(1) of Decree Law no. 472/1997	Time of regularization	Penalties reduced to	Scope
Par. a	Within 30 days of the violation	1/10 of the minimum	Only late payments
Par. a-bis	Within 90 days of the violation	1/9 of the minimum	All violations
Par. b	Within the deadline for filing the return for the year the violation was committed	1/8 of the minimum	All violations
Par. b-bis	After the deadline for filing the return for the year the violation was committed	1/7 of the minimum	All violations
Par. b-ter	After receipt of the draft of the final notice of assessment (“ <i>schema di atto</i> ”), not preceded by a tax audit report (“ <i>processo verbale di constatazione</i> ”), without an application for assessment with adhesion (“ <i>istanza di accertamento con adesione</i> ”) having been submitted	1/6 of the minimum	All violations
Par. b-quater	After the tax audit report (“ <i>processo verbale di constatazione</i> ”), not accepted by the taxpayer, but before receipt of the draft of the final notice of assessment (“ <i>schema di atto</i> ”)	1/5 of the minimum	All violations (except those connected to the electronic archiving of daily takings)
Par. b-quinquies	After receipt of the draft of the final notice of assessment (“ <i>schema di atto</i> ”), preceded by a tax audit report (“ <i>processo verbale di constatazione</i> ”), without an application for assessment with adhesion (“ <i>istanza di accertamento con adesione</i> ”) having been submitted	1/4 of the minimum	All violations
Par. c	Within 90 days of the violation	1/10 of the minimum	Only late returns

Penalty reductions

Violations related to the filing of the annual VAT return (article 5 of Legislative Decree no. 471/1997)

Omitted/late VAT return

The penalty for failing to file the annual VAT return will be 120 percent of the VAT due (previously between 120 percent and 240 percent). The minimum penalty will be EUR250.

If the VAT return is filed more than 90 days after the original deadline but before expiry of the statute of limitations (currently 31 December of the seventh subsequent year) and before the taxpayer is served notice of on-site inspections, investigations or audits, the penalty will be 75 percent of the VAT due.

Inaccurate VAT return (“dichiarazione infedele”)

The penalty for filing an inaccurate annual VAT return will be 70 percent of the additional VAT or the lower VAT credit (previously between 90 percent and 180 percent of the additional VAT or the lower VAT credit). The minimum penalty will be EUR150.

If the taxpayer files an amending annual VAT return before expiry of the statute of limitations (currently 31 December of the fifth subsequent year) and, in any case, before the taxpayer is served notice of on-site inspections, investigations or audits, the penalty will be 50 percent of the additional VAT due or lower VAT credit.

Violations related to the issue and registration of invoices (article 6 of Legislative Decree no. 471/1997)

Failure to issue and register invoices for taxable transactions

Failure to issue and register invoices for taxable transactions will trigger penalties amounting to 70 percent of the undocumented VAT (previously between 90 percent and 180 percent). The minimum penalty will be EUR300 (previously EUR500).

Failure to issue and register invoices for non-taxable transactions

Failure to issue and register invoices for non-taxable transactions will trigger penalties amounting to 5 percent of the undocumented consideration (previously between 5 percent and 10 percent). The minimum penalty will be EUR300 (previously EUR500).

Undue recovery of input VAT

The penalty for undue recovery of input VAT will amount to 70 percent of the VAT (previously 90 percent). In cases of application of VAT for an amount higher than due and of the application of VAT to exempt, zero-rated or out-of-scope transactions, the applicable penalty is between EUR250 and EUR10,000 while the right to recover the tax will be limited to the amount of VAT actually due⁵. The above penalties will not apply if the infringement also results in an inaccurate annual VAT return (in this case only the penalty for the inaccurate annual VAT return will apply).

Failure to regularize omitted or incorrect invoices

Taxpayers who do not receive a correct and timely invoice from the supplier will no longer have to issue a self-invoice and pay the VAT; they will only have to inform the Italian Revenue Agency within 90 days of the date the invoice should have been issued or the date of issue of the incorrect invoice. Failure to do so will trigger a penalty amounting to 70 percent of the VAT (previously 100 percent).

Omitted reverse charge

Failure to apply the reverse charge mechanism will trigger penalties of between EUR500 and EUR10,000 (previously between EUR500 and EUR20,000). If the transactions are not posted in the accounts in accordance with article 13 of Presidential Decree no. 600/73, a penalty amounting to 5 percent of the tax base will apply (previously between 5 percent and 10 percent).

Violations related to the export of goods (article 7 of Legislative Decree no. 471/1997)

The following changes have been made to article 7 of Legislative Decree no. 471/1997.

- In the case of indirect exports, if goods are not transported outside the EU within 90 days of delivery, the supplier will be subject to a penalty of 50 percent of the VAT (previously between 50 percent and 100 percent).
- The penalty for applying the zero-rating regime to supplies made to habitual exporters that have not submitted a declaration of intent form will be 70 percent of the VAT (previously between 100 percent and 200 percent).
- The penalty for taxpayers who indicate incorrect quality, quantity or sale price information of goods in invoices or in customs declarations for export sales, will amount to 70 percent of the VAT that would be due had the exported goods been sold domestically in Italy (previously between 100 percent and 200 percent).

Omitted and late VAT payments (article 13 of Legislative Decree no. 471/1997)

The penalty for omitted VAT payments will be 25 percent of the unpaid VAT (previously 30 percent).

In the case of late payments made within:

- 90 days of the due date, the penalty will be 12.5 percent of the VAT (previously 15 percent);
- 15 days of the due date, the penalty will be 0.83 percent of the VAT per day of delay (previously 1 percent per day of delay).

The following table summarizes the changes to the penalties for the main VAT violations.

Type of violation	“Old” ⁶ penalties	“New” ⁷ penalties
Omitted VAT return	120%-240% of the VAT due	120% of the VAT due
Inaccurate annual VAT return	90%-180% of the additional VAT due or the lower VAT credit	70% of the additional VAT due or of the lower VAT credit
Failure to invoice taxable transactions	90%-180% of the undocumented VAT. Minimum penalty of EUR500	70% of the undocumented VAT. Minimum penalty of EUR300
Failure to invoice non-taxable transactions	5% -10% of the undocumented consideration. Minimum penalty of EUR500	5% of the non-documented consideration. Minimum penalty of EUR300
Undue recovery of input VAT	90% of the VAT	70% of the VAT
Failure to regularize omitted or incorrect invoices	100% of the VAT	70% of the VAT
Omitted reverse charge	EUR500-EUR20,000	EUR500-EUR10,000
Non-application of VAT on indirect exports (goods not been exported within the time limit)	50%-100% of the VAT	50% of the VAT
Non-application of VAT on supplies made to habitual exporters that have not submitted a declaration of intent form	100%-200% of the VAT	70% of the VAT
Inaccurate quantity, quality, or sale price information in invoices or in customs declarations	100%-200% of the VAT	70% of the VAT
Omitted VAT payments	30% of the VAT	25% of the VAT

Notes

- (1) The Decree is not retrospective.
- (2) On condition that (i) all retrospective obligations are fulfilled and (ii) all payments are made before the Italian Revenue Agency raises a tax assessment.
- (3) Under this mechanism, the penalty is the one for the most serious violation, increased by 25 percent to 200 percent, if the taxpayer has broken several different rules or has broken the same rule several times.
- (4) Before the Decree came into force, the mechanism applied only in the event of assessment by the Italian Revenue Agency. This change implements recent Italian Supreme Court decisions (see, for instance, Decision no. 8589/2022).
- (6) Applicable to violations committed up to 31 August 2024.
- (7) Applicable to violations committed from 1 September 2024.

Document prepared by [Davide Morabito](#) and [Francesco Marconi](#)

Contacts

KPMG in Italy, Tax & Legal

Tax & Legal Professional Practice Team

E: it-fm-tpp@kpmg.it

kpmg.com/it

kpmg.com/it/socialmedia



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