



Italy: VAT measures introduced by the urgent economic growth measures and clarifications on e-invoicing

Tax Alert
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This Tax Alert summarizes the most important VAT measures following the conversion of Decree no. 34 of 30 April 2019 into law ('The Decree') and further clarifications on e-invoicing issued by the Italian tax authorities in Circular Letter no. 14/E of 17 June 2019 ('The Circular Letter').

VAT measures applicable as from 1 July 2019

Terms of issuance of 'immediate' invoices

The Decree has extended, from 10 to **12 days**, the terms of issuance regarding 'immediate' invoices for the supply of goods or services (as defined by article 6 of Italian VAT Law).

As regards the **invoice date**, the following scenarios should be considered.

Invoices issued before 1 July 2019

- E-invoices: the date of the supply of goods or services (identified by article 6 of the Italian VAT Law) = date of issuance ('Data' field of the XML file) = date of transmission via the *Sistema di Interscambio* (the SdI).
- Paper invoices: the date of the supply of goods or services (identified by article 6 Italian VAT Law) = date of issuance = date of transmission of the invoice to the customer.

Invoices issued on or after 1 July 2019

The Circular Letter clarifies the following:

- E-invoices: the date to be shown in the 'Data' field of the XML file is the date on which the transaction is deemed to be carried out (article 6 of Italian VAT Law). For instance, if the supply of goods takes place on 28 September 2019:
 - the date to be included in the 'Data' field of the XML file is 28 September 2019;
 - the XML file should be transmitted via the SdI within 12 days after 28 September, i.e. by 10 October 2019.
- Paper invoices: if the invoice is not issued on 28 September 2019, both the transaction date (28 September 2019) and the date of issuance (for instance 10 October 2019) should be shown on the invoice.

In addition, the Italian tax authorities have clarified the following on 'deferred' invoices:

- The term of issuance of deferred invoices remains unvaried (article 21, par. 4, let. a) of Italian VAT Law) i.e. the 15th day of the subsequent month to the one in which the transaction takes place;
- In case of e-invoices, the date to be reported in the 'Data' field of the XML file is the date of the last transaction carried out in that month. For instance, in the event of three separate transactions carried out on 2, 10 and 28 September 2019:
 - the date to be included in the 'Data' field of the XML file is 28 September 2019; and
 - the XML file should be transmitted via the SdI between 1 and 15 October 2019.

Applicable penalties for e-invoices

Law Decree no. 119/2018 introduced a six-month grace period during which, for both suppliers and customers, the penalties imposed by article 6 of Legislative Decree no. 471/1997 have been reduced as follows:

- a) no penalties apply if a compliant e-invoice is issued by the deadline for the VAT settlement of the relevant month;
- b) penalties are reduced by 80% if a compliant e-invoice is issued by the deadline for the VAT settlement of the month following the relevant one.

The reduction of penalties (point b) is extended until 30 September 2019 for taxpayers with monthly VAT settlements.

The Circular Letter clarifies that:

- the reduction/non-application of penalties does not include penalties for late VAT payments and any other penalty which is different from those cited in article 6 of Legislative Decree no. 471/1997;
- the reduction/non-application of penalties applies to all taxpayers until 30 June 2019;
- the reduction of penalties applies, to taxpayers with monthly VAT settlements, for transactions carried out until 30 September 2019. For instance, if a transaction is carried out on 28 September 2019, the penalties for late issuance could benefit from a reduction of 80% if the related e-invoice is issued by 16 November 2019.

Recovery of VAT charged in error

The Italian VAT Law provides that, when a supplier has charged VAT 'for a higher amount than due':

- the customer is entitled to recover the input VAT, and
- he is subject to a fixed penalty between EUR 250 and EUR 10k.

The aforementioned provision does not apply (and input VAT recovery can be denied) when the incorrect VAT is charged in a 'tax fraud'.

The Decree provides that the above rules also apply to transactions carried out before 1 January 2018 (unless charged in the context of tax fraud).

Terms of submission of the quarterly Communication VAT settlements

According to the Decree, taxpayers who submit an annual VAT return in advance by the end of February (instead of April) of the following year, can avoid filing the Communication of periodical VAT settlements related to the fourth quarter of the year, by including the relevant data in the annual VAT return.

This simplification should be applicable as of the year 2019. However, further clarification is expected.

Transmission of daily payment data for retailers

According to the Decree the e-transmission of daily payment details has to be fulfilled within 12 days of the transaction taking place.

In addition to the above, the Decree introduces a 'grace period' based on which, for the first six-month period in which the mandatory e-transmission of daily payment details becomes effective, the data can be sent to the tax authorities within a month after the one in which the transaction took place without any penalty for late transmission.

Purchases from non-established suppliers

In reference to transactions with non-resident customers, Italian suppliers can choose to send e-invoices through the SDI system (providing their non-resident customers with a paper copy of the e-invoice), or to issue paper invoices and to report the data to the Italian tax authorities via the monthly cross-border communication.

The Circular Letter also clarifies that in case of purchases from non-established suppliers for which the Italian taxpayer is required to issue an 'autofattura' (i.e. a self-invoice), the Italian taxpayer can choose to electronically issue the 'autofattura' through the SDI, thus avoiding to report these transactions in the monthly cross-border communication.

VAT measures applicable as of 1 January 2020

Transfer of the quarterly VAT Credit

Based on the current provisions, taxpayers are only entitled to transfer annual VAT credit arising from the annual VAT return.

According to the Decree, for VAT refund claims filed as of 1 January 2020, taxpayers will be entitled to transfer also the VAT credit asked for refund with quarterly VAT claims.

Letter of intent

Based on the current rules, the habitual exporter is required to provide his suppliers with a letter of intent and the related receipt of transmission as proof of e-filing with the Italian tax authorities. In case the supplier of the habitual exporter issues a zero-rated invoice before obtaining such documentation, a fixed penalty from EUR 250 to EUR 2,000 applies.

As of 1 January 2020, the Decree modifies the above rules as follows:

- the habitual exporter will no longer be required to provide his suppliers with a letter of intent and the related receipt of transmission;
- the supplier will have to verify on the Italian tax authorities website that the letter of intent has been submitted by the habitual exporter. Failing to do so will entail a penalty from 100% to 200% of the related VAT;
- the supplier of the habitual exporter will have to include the protocol number of the receipt of transmission released by the Italian tax authorities to the habitual exporter in the zero-rated invoices.

An implementing decree should be issued in this regard.

Stamp duty on e-invoices

As of 1 January 2020 the Italian tax authorities will automatically check if the e-invoices comply with stamp duty requirements and could apply penalties from 100% to 500% of the stamp duty amount for non-compliant e-invoices. For late or omitted payment of stamp duty a penalty of 30% of the stamp duty applies.

A Decree should be issued to implement the above rules.

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