



# Italy: Import VAT is considered a customs duty

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Legislative Decree no. 141/2024, dated 26 September 2024 and effective from 4 October (the “Decree”), has introduced several important changes in the treatment of VAT on imports, which significantly affect the nature of that tax, the joint and several liability of customs representatives, and import VAT penalties.

## The previous treatment of import VAT

Before the Decree was published, import VAT had always been treated as distinct and separate from customs duties as defined in EU and domestic law. Both the Court of Justice of the European Union (see judgment of 12 May 2022 in C-714/20 and that of 17 July 2024 in C-272/13) and the Italian Supreme Court (see judgments no. 18284 and no. 18286 of 4 July 2024) have repeatedly stated that import VAT is distinct and different from import duties; as a consequence of this treatment, penalties must be determined separately on the respective amounts due under each tax.

## The new rules

The Decree equates import VAT with customs duties, including them both in the concept of border duties, together with excise duties, monopoly duties and all other taxes due at the point where goods enter the territory of the State.

Article 27 of the Decree specifically mentions import VAT as one of the border duties, amending article 34 of the previous Unified Code of Customs Law (Presidential Decree no. 43/1973 - the so-called “TULD”), which did not include import VAT among those duties.

Under the new rules, import VAT is still not considered as a border duty when goods are brought into free circulation in Italy and

- placed in an Italian VAT warehouse under Regime 45, or
- transported to another Member State under Regime 42.

On 4 October 2024 the Customs Agency published a new circular addressing the main changes introduced by the Decree. The most relevant import VAT changes are listed below.

## Regime 42

The Decree adds new paragraphs to article 67 of Presidential Decree no. 633/72 (the "VAT Decree"). This is the article that enacts Regime 42, the simplification regime allowing importers to import VAT-free into Italy goods transported to another EU Member State.

- An importer intending to use Regime 42 must declare the VAT identification number of the final recipient of the goods in the EU Member State of destination.
- Upon request, the importer must be able to produce evidence that the transfer to the other EU Member State has taken place.
- If the Customs Agency considers the transaction to be dubious, it can ask the importer to provide a guarantee for the same amount as the import VAT suspended under Regime 42. The Customs Agency can enforce the guarantee if evidence of the transfer is not produced within 45 days or provides insufficient proof of the actual transfer. Importers authorized under articles 38 and 51 of Regulation (EU) No 952/2013 (i.e. Authorized Economic Operators) are exempt from the guarantee requirement.

## Penalties

Under the new rules, import VAT violations trigger border-duty penalties.

- If the amount of omitted import VAT exceeds EUR10,000, criminal charges will be brought under the rules on contraband (i.e. smuggling) rather than those on domestic VAT. The Customs Agency must inform the European Public Prosecutor's Office (EPPO), which will start a criminal investigation to determine whether there has been any criminal intent.
- In the case of unpaid import VAT, the Customs

Agency can seize the goods. On this point, the Italian Supreme Court, in judgment no. 18284 of 4 July 2024, has referred to the Constitutional Court a question about the legitimacy of extending the seizure of goods to a violation of VAT rules.

- If the amount of omitted import VAT is lower than EUR10,000, administrative penalties of between 100 percent and 200 percent of the undeclared import VAT are triggered (higher than the corresponding penalties for domestic VAT).

## Indirect customs representatives

Under the new rules, indirect customs representatives acting on behalf of the importer will be jointly and severally liable with the importer for the payment of import VAT. This new measure brings the Italian VAT rules into line with the requirements established by the Court of Justice of the European Union in Case C-714/20: "Article 201 of the VAT Directive must be interpreted as meaning that the liability of the indirect customs representative for the payment of import VAT, jointly and severally with the importer, cannot be accepted where there are no national provisions explicitly and unequivocally designating or recognizing that representative as being liable for that tax".

## Next steps

Importers should assess the impact of the new rules on their operations and consider using the Italian VAT warehouse regime not only as a cash-flow optimization mechanism but also as an instrument to manage the risks associated with import VAT.

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