



# Italy: Tax measures accompanying and anticipating the Budget Law for 2020

## Tax Alert

14 November 2019



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This Tax Alert summarizes the most important fiscal measures introduced by Law Decree no. 124 of 26 October 2019 (the 'Decree'), which was published in the Official Gazette on the same date and came into force on 27 October 2019. The Italian Parliament will have to convert the Decree into law (with possible amendments) by 25 December 2019.

### Assumption of tax liabilities and ban on offsetting – Article 1 of the Decree

The Decree introduces specific rules on the assumption of tax liabilities ('*accollo*') by a third party, which is currently regulated – though not in any detail – by the Taxpayer's Bill of Rights. Under the new rules, the party that takes over the tax liability must settle it in compliance with the domestic rules in force for each tax; however, it cannot offset the tax liability against its own tax credits.

In the event of forbidden offsetting, the payment is considered null and the penalties for omitted tax payments apply. In such cases the Italian Revenue Agency has until 31 December of the eighth year after that in which the tax liability has been settled to serve a tax notice and collect:

- the tax liability and the accrued interest, from both parties involved in the undue offsetting of the tax liability;
- penalties for omitted payment (30 percent of the amount), from the original taxpayer;
- penalties (of varying amounts) for the undue offsetting of the tax credit, from the party that has taken over the tax liability.

The above measures will be implemented by a decree to be issued by the Director of the Italian Revenue Agency.

### Enforcement measures to tackle undue tax offsetting – Article 3 of the Decree

The Decree modifies the rules under which tax credits declared in annual income tax and IRAP returns can be offset, aligning them with the existing rules on the offsetting of VAT credits.

Starting from 2020, taxpayers must adhere to the following rules when offsetting such tax credits.

- The tax credit must be included in the annual return.
- The tax credit may be offset from the tenth day after submission of the annual return.
- The F24 form in which the tax credit is offset may only be submitted through the Italian Revenue Agency's electronic system, even when a party does not have a VAT number.

These rules apply only to tax credits larger than EUR5,000.

A penalty of EUR1,000 applies if the Italian Revenue Agency rejects an F24 form that includes an offset tax credit. The penalty applies to F24 forms submitted after 1 March 2020.

A system to exchange data on offsetting will be introduced to facilitate cooperation between the tax and social security authorities.

### **Amendment of excise rules – Articles 5, 6, 7, 8, 10, 11 and 12 of the Decree**

**Article 5** of the Decree (under the heading 'combating excise duty fraud') introduces, from 1 November 2019, a 24-hour time limit within which a consignee of products under duty suspension must inform the Customs Authority (electronically through the EMCS system) of their takeover. Article 5 also clarifies that, in cases where excise goods under duty-suspension arrangements are transported by vehicles, the goods are taken over when they are actually unloaded from the vehicle and when, on the same day on which unloading is completed, details of the verified type and quantity of the goods are recorded in the consignee's accounts.

The same article 5 also:

- introduces new rules to standardize and coordinate the reliability and integrity requirements that must be met by those involved in the various stages of the energy-product distribution chain (e.g. the registered consignee);
- introduces lower capacity limits for private, agricultural and industrial warehouses and for tanks to which automatic fuel distribution equipment for private, agricultural and industrial use is connected;
- mandates the Customs Authority to establish, within 60 days, simplified arrangements for the keeping of loading and unloading records for the above warehouses and tanks.

With reference to fraud in the fuel sector, **article 6** of the Decree amends certain provisions of the Budget Law for 2018<sup>(1)</sup>. Among other things, it establishes that the exemption from the obligation to pay VAT in advance, offered to operators of tax warehouses who release fuel from the warehouse for sale or for their own use, is granted only to operators of warehouses with a storage capacity of no less than 3,000m<sup>3</sup>. The same article also introduces new rules for the monitoring of movements of energy products transported by vehicles.

(1) Law no. 205/2017.

**Article 7**, on the other hand, is designed to combat the non-payment of excise duty on motor fuels and heating fuels and to protect public health by combating the fraudulent use of certain hydrocarbons and other products in such fuels. It introduces special rules on the circulation of lubricating oils falling within CN codes 2710 19 81 - 2710 19 99 (and other products that will be identified within ninety days by a ministerial decree). It also introduces a new administrative code ('*codice amministrativo di riscontro*'), which needs to be requested by anyone who wishes to move those goods within Italy before they are released for consumption.

The Decree also:

- introduces a parameter for determining the maximum amount to be refunded to road hauliers who benefit from reduced excise duty on diesel fuel: one liter of diesel fuel consumed by each vehicle eligible for the reduction, for each kilometer travelled (**article 8**);
- imposes an obligation on operators of tax warehouses with a storage capacity of not less than 3,000m<sup>3</sup> to equip themselves, by 30 June 2020, with the Infoil computerized system for managing the holding and handling of petrol and diesel fuel (**article 10**);
- delegates the Customs Authority to adopt, within 60 days, a measure regulating the introduction of an obligation, from 30 June 2020, to submit online the accompanying document referred to in article 12 of the Italian Excise Law (for the circulation in Italy of gasoline and diesel fuel subject to excise duty) (**article 11**);
- delegates the Director of the Customs Agency to establish practical methods and deadlines for the communication of data relating to the transport and consumption of natural gas and electricity (**article 12**).

### **Use of data contained in XML files - Article 14 of the Decree**

The Decree provides that data contained in the XML file of e-invoices transmitted through the 'SDL' system must be digitally stored for a period of eight years after the filing of the annual VAT return for the relevant period or, in the event of litigation, until the dispute is settled.

Furthermore, the Decree allows:

- the Tax Police to use the data contained in the XML files for all their institutional purposes, which include police investigations focusing on public expenditure, capital markets and protection of intellectual property;
- the Tax Police and the Italian Revenue Agency to use such data for general risk analysis related to tax avoidance.

Before the Decree, such data could only be used for tax inspection purposes.

## Deadline for settlement of liabilities (so-called '*rottamazione-ter*') pursuant to article 3 of Law Decree no. 119 of 2018 - Article 37 of the Decree

The Decree postpones from 31 July 2019 to 30 November 2019 the deadline by which taxpayers may pay, without any penalties or interest, the whole amount (or at least the first installment) required to settle liabilities assigned to the tax collector. This option was introduced by article 3 of Law Decree no. 119/2018<sup>(2)</sup>.

## Higher criminal penalties – Article 39 of the Decree

The Decree increases the criminal penalties for the tax violations indicated in Legislative Decree no. 74 of 2000, thus raising prison sentences as follows.

- From a range of 18 months to 6 years to a range of 4 to 8 years for filing a false return by using invoices or other documents for non-existent transactions; this penalty is reduced to a range of 18 months to 6 years when the avoided tax is lower than EUR100,000.
- From a range of 18 months to 6 years to a range of 3 to 8 years for filing a false return using other deceptions.
- From a range of 1 year and 3 years to a range of 2 to 5 years for filing an inaccurate return.
- From a range of 18 months to 4 years to a range of 2 to 6 years for failing to file a return.
- From a range of 18 months to 4 years to a range of 2 to 6 years for failing to file a withholding agent's return when the amount of withholding taxes is higher than EUR50,000.
- From a range of 18 months to 6 years to a range of 4 to 8 years for raising invoices or other documents for non-existent transactions that support other taxpayer fraud. The prison sentence is reduced to a range of 18 months to 6 years when the amount of the non-existent transactions is lower than EUR100,000.
- From a range of 18 months to 6 years to a range of 3 to 7 years for concealment and destruction of accounting records.

The Decree also reduces the tax violation thresholds that trigger criminal penalties, as follows.

- For the filing of an inaccurate return, criminal penalties are triggered when the avoided tax is (i) higher than EUR100,000 (previously EUR150,000) and (ii) the under-declared tax base is more than 10 percent of total turnover and, in any case, higher than EUR2 million (previously EUR3 million).
- For failing to make withholding tax payments, criminal penalties are triggered when the under-payment is higher than EUR100,000 (previously EUR150,000).
- For failing to make VAT payments, criminal penalties are triggered when the under-payment is higher than EUR150,000 (previously EUR250,000).

(2) See our [Tax Alert](#) dated 31 October 2018.

## Removal of fuel products from fiscal warehouses (also used as VAT warehouses) – Article 6.1(a) and (b) of the Decree

The Budget Law for 2018<sup>(3)</sup> introduced, with some exceptions, VAT payment obligations for the removal of fuel and other combustible products (gasoline and diesel fuel destined for use as automotive fuel and identified by customs tariff codes 27101245, 27101249, 27101943, and 27102011) from fiscal warehouses that are also used as VAT warehouses.

The Decree has reduced the scope of the exceptions, so that the VAT payment upon removal from the warehouse is always due **unless**:

- the goods are removed from the warehouse by an operator who meets the 'trustworthiness' requirements established in article 3 of the Ministerial Decree of 13 February 2018 and files an adequate guarantee with the Italian Revenue Agency, as per article 4 of that ministerial decree.
- the goods removed from the warehouse are owned by the warehouse-keeper and the warehouse has a storage capacity of not less than 3,000m<sup>3</sup>.

Instead, sales of fuel and other combustible products inside a fiscal warehouse that is also used as VAT warehouse are subject to VAT.

These rules will enter into force **on 1 January 2020**.

## Ban on using the frequent exporters' scheme to purchase fuel products – Article 6.1(c) of the Decree

The Decree **precludes the possibility** of purchasing without VAT, under the frequent exporters' scheme, gasoline and diesel fuel destined for use as automotive fuel and identified by customs tariff codes 27101245, 27101249, 27101943, and 27102011.

As the sole exception to this rule, operators in the categories listed under article 24-*ter* of the Italian Excise Code may, subject to further constraints, still purchase fuel products without VAT under the frequent exporters' scheme.

This rule officially came into force on 27 October 2019 (i.e. the day after the Decree was published in the Official Gazette – see article 60 of the Decree). However, based on the Taxpayer's Bill of Rights<sup>(4)</sup>, a law cannot impose additional obligations on taxpayers until 60 days after it has come into force. Further clarifications are expected.

## Payment of withholding taxes on wages and fees – Article 4 of the Decree

The Decree introduces various measures to combat the avoidance of withholding tax in contract work.

For instance, the customer must pay, on behalf of the contractor, the withholding taxes on wages and fees due to those who have directly provided work or services.

(3) See our [Tax Alert](#) dated 4 January 2018.

(4) Article 3(2) of Law no. 212/2000.

The contractor must inform the customer of the amount of withholding tax at least 5 days before the due date. The customer cannot offset this tax liability against its own tax credits.

These rules will enter into force **on 1 January 2020**.

### **Reverse charge on contract work – Article 4.3 of the Decree**

The Decree widens the scope of the reverse-charge mechanism to supplies of services rendered by contractors, subcontractors, consortia etc., mainly at the premises of the customer and using assets owned by the customer.

This provision will not apply to public bodies and other entities falling within the scope of the split-payment mechanism, nor to employment agencies regulated by Legislative Decree no. 276/2003.

Under article 395 of Directive 2006/112/EC, the entry into force of this provision is subject to prior approval by the EU Commission.

### **Pre-prepared VAT ledgers and VAT returns – Article 16 of the Decree**

For transactions dating from 1 July 2020, the Italian Revenue Agency will pre-prepare (i) the input and output VAT ledgers and (ii) the quarterly VAT settlement reports due by VAT taxpayers established in Italy. These files will be accessible from the taxpayer's personal page on the Italian Revenue Agency's website.

This system will kick in with the annual VAT return for 2020 ('IVA 2021' return).

The implementation of these provisions, which are experimental, is possible because the Revenue Agency has, in principle, access to the details of all input and output transactions of established taxpayers (based on the data channeled by taxpayers through the SDI and the 'Esterometro' and on the transmission of daily payment details).

Taxpayers will be able to make any appropriate changes to the pre-prepared files.

### **Italian digital services tax (DST)**

The bill published on 15 October 2019 included DST rules (see our Tax Alert dated 17 October 2019).

However, the final version of the Decree no longer includes them.

The DST may still be introduced by the Budget Law for 2020, which will come into force on 1 January 2020.

Further updates on this matter will follow shortly.

### **New rules for the retail sector – Articles 19 and 20 of the Decree**

#### ***Tax receipt lottery***

As of 1 January 2020, retail customers will have the right to take part in a lottery<sup>(5)</sup>.

Cash prizes will be exempt from personal income tax.

To take part in the lottery, customers should ask retailers to include their tax code on the till receipt/sale document.

The Decree introduces a penalty of EUR100 to EUR500 for those retailers who:

refuse to include the tax code of customers who wish to participate in the lottery;

do not electronically transmit the customer's tax code to the Italian Revenue Agency.

The Decree also introduces – from the same date – an additional tax receipt lottery, reserved for customers who use electronic payment systems.

#### ***Tax credit for electronic payments (Article 22 of the Decree)***

The Decree introduces a tax credit, to be offset against other tax liabilities. The tax credit corresponds to 30 percent of the fees charged by banks for the use of electronic payment systems (i.e. credit cards, debit cards or prepaid cards) in sales made from 1 July 2020.

Only retailers whose turnover does not exceed EUR400,000 in the previous tax year are eligible for this tax credit.

#### ***Penalty for refusing electronic payments (Article 23 of the Decree)***

The Decree introduces a penalty for retailers who refuse to accept electronic payments, i.e. by credit card, debit card or prepaid card.

As of 1 July 2020, such retailers will face a basic penalty of EUR30, plus 4 percent of the value of the transaction for which electronic payment has been refused.

(5) Introduced by Law no. 232/2016.

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**Tax Alert** / KPMG in Italy / 14 November 2019

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