



Italy: VAT exemption for services supplied by a cost-sharing group to a VAT group

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Recent changes to Italian law have clarified that services supplied by a cost-sharing group to a VAT group are eligible for an exemption provided by the VAT Directive.

The legal framework

Article 72-bis of Law Decree no. 104/2020 (as amended by Law no. 126 of 13 October 2020) clarifies that the VAT exemption provided by article 132(1)(f) of the VAT Directive (as enacted in Italy by article 10[2] of Presidential Decree no. 633/72) is also applicable to services supplied by a cost-sharing group to a VAT group.

VAT exemption requirements

The services supplied by a cost-sharing group (e.g. a consortium) to a VAT group are VAT-exempt when the following conditions are all met:

- The cost-sharing group is not a member of the VAT group.
- At least one member of the cost-sharing group is also a member of the VAT group.
- The VAT group as a single taxable person meets the requirements set out in article 10(2) of Presidential Decree no. 633/72, i.e. the recipient of the services must not have a deductible percentage of input VAT that is higher than 10 percent (the 'pro-rata' rule) in the previous three years.

This last condition should be verified:

- in the case of the single entity (which is a member of both the consortium and the VAT group), for each of the years **preceding** the setup of the VAT group and included in the three-year reference period;
- in the case of the VAT group, for each of the years **following** the setup of the VAT group and included in the three-year reference period.

Retrospective effects of the new rule

Under the above conditions, if a company which is a member of a VAT group and a cost-sharing consortium receives services from the consortium, those services will still be exempt from VAT and will be considered as supplied to the VAT group itself.

The above rules apply retrospectively⁽¹⁾.

Cost-sharing exemption and ECJ decisions

The cost-sharing exemption rules currently in force in Italy are also applicable to financial services (exempt under article 135 of the VAT Directive). They might be modified in the future, to take into account the judgments of the Court of Justice of the European Union in Cases C-326/15, C-605/15 and C-616/15, which restricted the use of the cost-sharing exemption to entities operating in sectors whose activities are exempt under article 132 of the VAT Directive (healthcare), thus excluding from the exemption those activities falling under article 135 (financial services, insurance, real estate, gaming, etc.).

Further comment

Article 72-*bis* clarifies (with retrospective effect) how the cost-sharing group exemption interacts with a VAT group, when one of the members of the cost-sharing group is also a member of the VAT group. However, it does not cover cases where the cost-sharing group itself is a member of a VAT group⁽²⁾.

(1) See paragraph 2 of article 72-*bis*.

(2) See working papers 856 and 883 published by the VAT Committee on 6 May and 30 September 2015 respectively.

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