



Italy: bad debt relief – VAT refunds

Tax & Legal Alert
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The Italian Supreme Court — in judgment no. 4900 of 4 March 2026 — has recognised a taxable person's right to claim a VAT refund directly from the Treasury when it has not been paid by a customer that has been involved in **insolvency proceedings for over 10 years**.

A refund is allowed when it is not possible to issue a credit note to recover the VAT and when the impossibility of the creditor's claim being satisfied during the insolvency proceedings can be reasonably demonstrated.

Italian bad debt relief

The standard VAT recovery process, when a customer is involved in insolvency proceedings, depends on when those proceedings start.

- In the case of proceedings starting **from 26 May 2021** – i.e. following Law Decree no. 73/2021, which amended article 26 of the Italian VAT Act – it is possible to issue a credit note, **after the start of the proceedings**, to adjust the VAT.
- In the case of proceedings starting **before 26 May 2021**, suppliers have to apply the “old” article 26 and wait until **completion of the insolvency process** to issue a credit note.

Italian Supreme Court judgment no. 4900/2026 addresses the second case.

EU legislation and principles established by the European Court of Justice

Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 (the “EU VAT Directive”) requires Member States to reduce the taxable amount and, consequently, the VAT due whenever, after a transaction has been concluded, the taxable person receives none or only part of the consideration. Article 90(2), which specifically addresses cases of total or partial non-payment, allows Member States to derogate from paragraph 1.

According to the principles set out in Case C-314/22 by the Advocate General of the European Court of Justice (“CJEU”), article 90(1) can be directly applied where the Member State erroneously applies the option to derogate, provided for in article 90(2). It follows that, whenever a situation of significant uncertainty arises that is not covered by national provisions, the direct application of article 90(1) is permitted¹. Furthermore, the long pre-financing of VAT affects the fundamental rights of the taxable person and is contrary to the principle of neutrality².

The CJEU considers “ten years” of financing to be an “excessively long” time limit³.

Italian Supreme Court judgment no. 4900/2026

The Italian Supreme Court, upholding the CJEU principles, has ruled that the “old” article 26 of the Italian VAT Act — i.e. the version applicable to proceedings started before 26 May 2021 — must be disapplied when the insolvency proceedings have lasted over 10 years and the impossibility of collecting the debt has been demonstrated.

The case

A supplier had provided goods and issued a regular VAT invoice to a company that failed to pay both the consideration and the VAT. The customer subsequently went into extraordinary administration.

Although this insolvency process had lasted for several years and the consideration had still not been paid, the supplier was unable to recover the VAT through a credit note, as the insolvency process had not yet ended. Therefore, the supplier claimed a VAT refund directly from the Treasury, upon cessation of its business activity.

The Italian Supreme Court’s position

The tax base is the consideration actually received by the taxable person. Therefore, a refund claim submitted by a taxable person that, after issuing a regular invoice, has remitted the VAT without being paid by the customer must be accepted, provided that:

- the customer is involved in insolvency proceedings that are still running after more than 10 years (extraordinary administration in the case in question);
- the impossibility of the claim being satisfied during the proceedings is reasonably demonstrated (certification by the judicial commissioner in the case in question).

How KPMG can help

KPMG in Italy is already experienced in assisting clients in claiming VAT refunds from the Treasury in cases where, due to long-running insolvency proceedings, VAT cannot be recovered through a credit note.

This important Italian Supreme Court judgment, by acknowledging the 10-year point in insolvency proceedings, should enable Italian businesses (or Italian VAT-registered entities) to obtain a VAT refund earlier than was previously possible.

¹“Article 90(1) of the VAT Directive is directly applicable where the Member State erroneously applies the option to derogate provided for in Article 90(2) of that directive, in that it fails to take into account the uncertainty of definite non-payment and instead excludes the right to reduce the taxable amount altogether” (Case C-314/22, Opinion of Advocate General Kokott, delivered on 7 September 2023, paragraph 56).

²[T]he principle of neutrality prohibits a disproportionately long pre-financing of the tax, provided that the taxable person (the supplier) has taken reasonable steps to discharge its function as tax collector for the State. The latter always presupposes the issue of an unsuccessful request for payment (reminder) to the recipient of the supply. It does not, however, require unsuccessful court proceedings or the opening or conclusion of insolvency proceedings in respect of the assets of the recipient of the supply” (ibid, paragraph 103[3]).

³“(…) a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful when such proceedings may last longer than ten years” (Case C-246/16, paragraph 29).

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