



Italy: Tax measures accompanying the Budget Law for 2020

Tax Alert

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This Tax Alert lists the most important tax changes introduced by Law Decree no. 124 of 26 October 2019, converted into law last December (the 'Tax Decree for 2020' or, more simply, the 'Decree')⁽¹⁾.

INCOME TAXES

Transfer of tax liabilities and ban on offsetting - Article 1 of the Decree

The Decree introduces specific rules on the transfer of tax liabilities to a third party. 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 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.

(1) Converted into law on 19 December 2019 by Law no. 157, which was published in the Official Gazette on 24 December 2019 and has been in force since the following day.

- 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 taxpayer does not have a VAT number.

These rules apply only to tax credits larger than EUR 5,000.

There is a penalty if the Italian Revenue Agency rejects an F24 form that is submitted after 1 March 2020 and includes an offset tax credit. The penalty is 5 percent for an F24 form used to settle up to EUR 5,000 in taxes and EUR250 for an F24 form used to settle more than EUR 5,000 in taxes.

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

Income from trusts - Article 13

Article 13 of the Decree alters the tax treatment of income from trusts. Under the new rules:

- income allocated to trust beneficiaries will be taxable, even if the trust is non-resident;
- income will be taxable if paid to residents of Italy by trusts and similar entities established in countries or jurisdictions that, with regard to the tax treatment of trust income, are deemed to be tax havens, even if the resident payees cannot be considered the beneficiaries of the income.

Moreover, when a foreign trust or equivalent entity pays sums to parties and beneficiaries resident in Italy, and it is not possible to establish the nature of those sums (i.e. determine whether they are distributions of capital or of profits), those sums must be treated as profits and therefore as taxable.

DEBT COLLECTION

Deadline for settlement of debts (so-called 'Rottamazione-ter') - Article 37 of the Decree

The Decree postpones – from 31 July 2019 to 30 November 2019 – the deadline by which taxpayers can settle⁽²⁾ – without any penalties or interest – the full amount (or at least the first instalment) of debts assigned to the tax collector.

During conversion of the Decree, a new paragraph was added, stipulating that the rules⁽³⁾ on the offsetting of tax collection notices against sums owed to companies by the public administration will also apply in 2019 and 2020 to debts entrusted to collection agents by 31 October 2019.

Moreover, the debt to be collected must be less than or equal to the sum claimed from the public administration.

(2) As per article 3 of Law Decree no. 119/2018 - see our [Tax Alert dated 31 October 2018](#).

(3) Article 12(7-bis) of Legislative Decree no. 145 of 23 December 2013, converted into law by Law no. 9 of 21 February 2014.

Finally, two further paragraphs have been introduced, concerning (i) the interest rate for the payment, collection and refund of each tax (which must be between 0.1 percent and 3 percent); (ii) differentiated rates for certain types of interest.

LOCAL TAXES

Property tax on offshore platforms - Article 38

A property tax on offshore platforms (called 'IMPI') now replaces all other ordinary local property taxes on platforms used to produce hydrocarbons and located within 12 miles of Italy's coast. The IMPI rate is 1.06 percent of the book value of the platform, calculated using the criteria for cadastral category D constructions which are not registered in the *Catasto* (Land Registry), which are fully owned by enterprises, and for which the enterprises keep separate accounts.

PENALTIES

Increases in criminal penalties - Article 39 of the Decree

The Decree increases the prison sentences for the tax violations indicated in Legislative Decree no. 74/2000, 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 evaded tax is lower than EUR 100,000.
- 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 to 3 years to a range of 2 to 4.5 years for filing an inaccurate return.
- From a range of 18 months to 4 years to a range of 2 to 5 years for failing to file a return.
- From a range of 18 months to 4 years to a range of 2 to 5 years for failing to file a withholding agent's return when the amount of withholding taxes is higher than EUR 50,000.
- 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 EUR 100,000.
- 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 evaded tax is (i) higher than EUR 100,000 (previously EUR 150,000) and (ii) the under-declared tax base is more than 10 percent of total turnover and, in any case, higher than EUR2 million (previously EUR 3 million).

The legislator has also extended the scope of the seizure rules if the evaded tax or the amount of fictitious costs in the crimes referred to in articles 2, 3, 8 and 11 of Legislative Decree no. 74/2000 exceeds a certain threshold. A taxpayer's goods/assets may be seized if the offender's declared income or economic activity is disproportionate to their value and, at the same time, there is no credible explanation of their source.

Another significant amendment made when the Decree was converted into law is that certain grounds for not meting out punishment⁽⁴⁾ can also apply to (i) the crime of filing a false return by using invoices or other documents for non-existent transactions and (ii) the crime of filing a false return using other deceptions. This exemption from punishment applies when the tax debts, together with penalties and interest, have been fully paid or when – before a tax audit has started – the tax offender regularizes his position by voluntarily disclosing the offence or submitting any missing return.

The Decree also adds tax crimes to the list of criminal offences that entail corporate liability of legal entities as per Legislative Decree no. 231 of 2001.

Legal entities will be held criminally liable and can be punished with a monetary penalty when one of the crimes indicated in articles 2, 3, 8, 10 and 11 of Legislative Decree no. 74 of 2000 is committed by an individual who is part of the legal entity's organization (as a representative or employee), in the interests or to the ultimate advantage of that legal entity.

If the legal entity, following the commission of the crimes, has made a significant profit, the penalty is increased by one-third.

Penalties can also take the form of disqualification, *e.g.* a ban on contracting with the public administration, exclusion from concessions, loans, contributions and subsidies or revocation of those already granted, and a ban on advertising goods and services.

(4) Those established in article 13[2] of Legislative Decree no. 74/2000.

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