



New rules for fiscal representatives of non-EU companies

Tax & Legal Alert
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Legislative Decree no. 13 of 12 February 2024, introducing new rules for Italian fiscal representatives of non-EU businesses, was published in the Official Gazette on 21 February 2024.

The new rules are designed to fight fraudulent use of the VAT exemption on imports, granted by article 143(1)(d) of EU Directive 2006/112/EC, which exempts the importation of goods dispatched or transported from a third territory or a third country into a Member State other than that in which the dispatch or transport of the goods ends, where the supply of such goods qualifies as an intra-Community supply.

Under the new rules, Italian fiscal representatives of businesses not established in the EU are jointly liable with their represented companies and are required to:

- verify that the information and documents provided by the non-EU company are accurate and complete before they apply for its Italian VAT registration;
- fulfil several conditions to prove their trustworthiness as a fiscal representative, e.g. no previous convictions for tax crimes;
- submit a guarantee in favour of *Agenzia delle Entrate* (the Italian Tax Authority – “ITA”), the details of which will be determined by a future implementing decree.

Fulfilment of these three new obligations is a precondition for inclusion by ITA of the Italian VAT number of the non-EU represented companies in the VIES database and for intra-EU supplies to and from Italy.

Further details

The new rules introduce several changes to the main Italian VAT law - Presidential Decree no. 633/72 (the "VAT Law").

A new paragraph 7-quater has been added to article 35 of the VAT Law, stating that non-EU companies appointing an Italian fiscal representative must submit a guarantee if they wish to register their Italian VAT ID with VIES in order to make intra-Community supplies. Details of the guarantee will be provided in a subsequent Ministry of Economy and Finance decree.

The new paragraph also states that if the non-EU company wishes to register their Italian VAT ID with VIES, the fiscal representative must verify that the documentation provided by the non-EU entity to support its registration in VIES is complete and correct. Again, a subsequent decree will explain the process that the representative must follow to confirm those details, as well as the powers of ITA and the tax police (*Guardia di Finanza*) to verify the data.

A new penalty ranging from EUR3,000 to EUR50,000 will be imposed if the fiscal representative does not fulfill the new requirements set out in article 35.

A new sentence has also been added to article 17 of the VAT Law, stating that the fiscal representative must meet the standards of trustworthiness and reliability established in several pieces of legislation. For example, the representative must not have been convicted for tax-related crimes, corruption, etc. A subsequent decree will clarify in which cases ITA may require the submission of a guarantee from the fiscal representative, also considering the number of foreign entities that it represents.

It is currently unclear whether the guarantee submitted under the new article 35 and that submitted under the new article 17 are separate or can be combined.

Who the new rules affect

The decree comes into force the day after its publication in the Official Gazette, i.e. today 22 February 2024. Pending confirmation from ITA, the new obligations should not be retroactive; therefore, they should not affect Italian fiscal representatives already operating in Italy on behalf of non-EU companies.

KPMG's Italian VAT team is on hand to clarify how to apply the new rules and comply with the new obligations.

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