



Italy: New Italian VAT measures

Tax Alert
30 October 2019



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The Italian Government approved Law Decree no. 124 of 26 October 2019 (published in the Official Gazette no. 252 of 26 October 2019), herein after the '**Law Decree**'.

Increases of personal penalties for tax crimes

The Law Decree significantly increases criminal penalties for the tax violations provided in Legislative Decree no. 74 of 2000.

As far as VAT violations are concerned, the applicable personal penalties (i.e. imprisonment) have been raised:

- from a range of '1.5 years to 6 years' to a range of '**4 years to 8 years**' for filing a false VAT return by using invoices or other documents related to non-existing transactions; such penalty is reduced to a range between 1.5 years and 6 years when the evaded tax at stake is lower than EUR 100,000.
- From a range of '1.5 years to 6 years' to a range of '**3 years to 8 years**' for filing a false VAT return by using other methods of deception.
- From a range of '1 year to 3 years' to a range of '**2 years to 5 years**' for filing an unfaithful VAT return.
- From a range of '1.5 years to 4 years' to a range of '**2 years to 6 years**' for failing to file a VAT return.
- From a range of '1.5 years to 6 years' to a range of '**4 years to 8 years**' for raising invoices or other documents for non-existing transactions that support other taxpayers' frauds. The imprisonment period is reduced to a range between 1.5 years and 6 years when the amount of the non-existing transactions is lower than EUR 100,000.
- From a range of '1.5 years to 6 years' to a range of '**3 years to 7 years**' for concealment and destruction of accounting documents.

Furthermore, the Law Decree reduces the thresholds for tax violations to trigger the application of criminal penalties, as follows:

- for the filing of an unfaithful VAT 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 taxable base is more than 10% of the total turnover and, in any case, higher than EUR 2 million (previously EUR 3 million);
- for failing to make VAT payments, criminal penalties are triggered when the under-payment is higher than EUR 150,000 (previously EUR 250,000).

Said provisions will enter into force as of the date of publishing in the Official Gazette of the conversion into Law of the Law Decree.

Removal of fuel products from fiscal warehouses (also used as VAT warehouses)

The budget Law for 2018 (see our [Tax Alert](#) from 4 January 2018), introduced VAT payment obligations, as a general rule with some derogations, for the removal of fuel and other combustible products (gasoline and diesel fuel destined for use as automotive fuel with customs tariff codes: 27101245, 27101249, 27101943, 27102011) from fiscal warehouses that are also used as VAT warehouses.

The Law Decree has reduced the scope of the exceptions to said obligations, so that the payment of the VAT upon removal from the warehouse is always due apart from specific cases. In particular, the **VAT payment is not due** if:

- The goods are removed from the warehouse by an operator who jointly meets the 'trustworthy' requirements as per art. 3 of Ministerial Decree 13 February 2018 and files an adequate guarantee with the tax authorities, as per art. 4 of the aforementioned 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 3,000 cubic meters.

On the other hand, sales of the aforementioned fuel and other combustible products inside the fiscal warehouse that is also used as VAT warehouse, are subject to VAT.

Said rules will enter into force **as of 1 January 2020**.

Prohibition to use the 'Plafond' (Letters of intent) for purchases of fuel products

The Law Decree **precludes the possibility** for frequent exporters' to purchase without VAT, under the frequent exporters' scheme, the aforementioned fuel products (gasoline and diesel fuel destined for use as automotive fuel with customs tariff codes: 27101245, 27101249, 27101943, 27102011).

As a sole exception to this rule, operators belonging to categories listed under art. 24-*ter* of the Italian Excise Code, and subject to specific further limitations, may still purchase fuel products without VAT under the frequent exporters' scheme.

This provision should be regarded as entered into force on 27 October 2019 (i.e. the day after the publishing of the Law Decree in the Official Gazette - see art. 60 of the Law Decree). However, based on the Taxpayer's Bill of Rights (Law 212/2000, art. 3(2)), a law cannot introduce additional fulfilments to taxpayers before 60 days from the entry into force of the law itself. Further clarifications on this are expected.

Payment of withholding taxes on wages

The Law Decree sets forth various measures contrasting the evasion of withholding tax payments.

In particular, the customer of a contract work is liable to pay to the Treasury, on behalf of the contractors involved in the contract work, withholding taxes on wages and fees due to employees and professionals.

To these purposes, the contractor should provide the customer with the due amount within 5 days before the payment due date. The customer must pay the amounts due without the option to offset them against other tax receivables.

Said rules enter into force **as of 1 January 2020**.

Reverse-charge on contracts works

The Law Decree widens the scope of the reverse-charge mechanism to supplies of services, rendered under contract works (by contractors, subcontractors, consortia etc.), mainly carried out at the premises of the customer by using assets owned by the customer itself.

Such provision will not apply to public bodies and other entities falling within the scope of the split payment mechanism, nor to employment agencies as per D.Lgs. no. 276/2003.

The entry into force of this provision is subject to a prior approval by the EU Commission under art. 395 of EU Directive 2006/112.

Pre-filled VAT ledgers and VAT returns

For transactions carried out **as of 1 July 2020**, the Revenues' Agency will draft (i) the input and output VAT ledgers and (ii) the quarterly communications of periodical VAT settlements due by VAT taxpayers established in Italy and will make them available on the taxpayer's personal profile on the tax authorities' website.

As of the annual VAT return for 2020 (form IVA 2021), the Revenues' Agency will draft the annual VAT return and will make it available on the taxpayer's personal profile on the tax authorities' website.

The implementation of these provisions, that have an experimental nature, is possible because the Revenues' Agency have in principle access (based on the data channeled by taxpayers through the SDI, the '*Esterometro*' and the transmission of daily payment data) to the details of all input and output transactions carried out by established taxpayers.

The taxpayers will have the possibility to make any appropriate changes to the proposed drafts.

Italian DST (Digital Services Tax)

The draft Law Decree (made available on 15 October) included DST rules (see our Tax Alert from 17 October 2019).

The final version of the Law Decree does not include the DST provisions any longer.

The DST may still be introduced by the Budget Law 2020, to be enacted from 1 January 2020.

Further updates on this matter will follow shortly.

New provisions for the retail sector

Tax Receipt Lottery

As of 1 January 2020, retail customers will have the right to take part in a lottery, introduced by Law 232/2016.

Cash prizes will be exempt from personal income taxation.

To participate in the lottery customers should ask retailers to include their fiscal code on the till receipt/sale document.

The Decree introduces a penalty from Euro 100 to Euro 500 for those retailers who:

- i. refuse to include the fiscal code of customers interested in participating in the receipt lottery; or
- ii. do not electronically transmit the customer's fiscal code to the Italian Tax Authorities.

The Decree introduces – starting from the same date – an additional tax receipt lottery, reserved for customers who use electronic payments

Tax credit for electronic payments

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

Only retailers whose turnover did not exceed EUR 400,000 in the previous tax year are eligible for such tax credit.

Penalty for refusing electronic payments

The Decree introduces a penalty for retailers who refuse to accept payments via electronic systems (i.e. credit cards, debit cards or prepaid cards).

More specifically, as of 1 July 2020 those retailers will be subject to a base admin penalty equal to EUR 30, then increased by 4% of the value of the transaction for which the electronic payment has been refused.

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Tax Alert / KPMG in Italy / 30 October 2019

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