



Italy: Energy Decree

Tax & Legal Alert
31 March 2022



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The new rules have been introduced by Decree Law no. 21 of 21 March 2022, which sets out 'Urgent measures to tackle the economic and humanitarian effects of the Ukraine crisis' (the 'Decree'). Published in Official Gazette no. 67 of 21 March 2022, the Decree came into effect the following day.

The Decree will have to be converted into law within 60 days of its publication and may undergo changes during its conversion.

Deductible petrol vouchers - Article 2

In the context of steeply rising fuel prices, article 2 allows private firms to gift petrol vouchers to their employees. Up to an amount of EUR200 per employee (which is on top of the current threshold), these vouchers are not included in the worker's taxable income.

Subsidy, in the form of a tax credit, to help businesses purchase electricity - Article 3

To partially offset the higher costs of electricity, article 3 gives businesses that have 16.5kW or 16.5kW+ electricity meters (other than businesses classed as big energy eaters⁽¹⁾) a special subsidy. This takes the form of a tax credit and is equal to 12% of the price of electricity actually consumed in the second quarter of 2022, as evidenced by purchase invoices. It can be claimed if the average price per kWh of electricity in the first quarter of 2022, net of taxes and subsidies, has risen by more than 30% of the corresponding average price in the first quarter of 2019.

The tax credit can be used only to offset tax bills and only up to 31 December 2022, without any limit on offsetting. It is not included in the calculation of the IRES or IRAP base or in the calculation of the deductibility ratio referred to in articles 61 and 109 (5) of the Italian Income Tax Code.

It is possible to combine the tax credit with other reliefs for the same costs, provided that the combined relief (also considering that the tax credit will not be included in the calculation of the IRES or IRAP base) does not exceed the cost of the electricity.

(1) The big consumers of electricity indicated in the Ministry of Economic Development Decree of 21 December 2017.

The tax credit can be transferred, but only in full. Moreover, in order to align this rule with the reliefs available for building renovations, two further transfers are allowed after the first one, but only if the transfers are to a bank, insurance undertaking or financial intermediary. Financial intermediaries authorized to transfer the tax credit after they have purchased it are, however, forbidden⁽²⁾ from purchasing the tax credit in the first place if the circumstances require them to report and abstain from a suspicious transaction⁽³⁾.

If the tax credit is transferred, the transferee must request the endorsement of the documentation certifying that the tax credit eligibility requirements have been satisfied.

The tax credit can be used by the transferee in the same way that it would have been used by the transferor and, in all cases, up to the same 31 December 2022 deadline.

The Director of the Italian Revenue Agency will issue guidance on how the rules on the tax-credit transfers will actually be implemented.

Subsidy, in the form of a tax credit, to help businesses purchase natural gas - Article 4

To offset the higher costs of natural gas, article 4 of the Decree gives businesses - other than big consumers of gas⁽⁴⁾ - a special subsidy. This takes the form of a tax credit and is equal to 20% of the price of gas consumed in the second calendar quarter of 2022 for uses other than thermoelectric ones. The tax credit is available if the benchmark price of natural gas - calculated as the average daily market price in the first quarter of 2022, as published by *Gestore Mercati Energetici (GME)* - has risen by more than 30% of the corresponding average price in the first quarter of 2019.

Again, the tax credit can be used only to offset tax bills and only by 31 January 2022, without any limit on offsetting.

Like the electricity tax credit available under article 3 of the Decree, the gas tax credit available under article 4 will not have to be included in the calculation of the IRES or IRAP base. It can be combined with other reliefs for the same

costs, provided that the combined relief, also considering that the tax credit will not be included in the calculation of the IRES or IRAP base, does not exceed the cost of the gas.

The tax credit can only be transferred in full. The rules applicable to the transfer of the tax credit to banks or financial intermediaries, and to the endorsement of documentation, are the same as those set out in article 3 of the Decree.

Higher tax credit for energy eaters (electricity and gas) - Article 5

A special subsidy, in the form of a tax credit, was introduced at the beginning of March⁽⁵⁾ for big consumers of **electricity**⁽⁶⁾. Article 5 of the Decree raises this tax credit by 5 percentage points, from 20% to 25%.

Also introduced at the beginning of March⁽⁷⁾ was a special subsidy, in the form of a tax credit, for big consumers of **gas**⁽⁸⁾. The second paragraph of article 5 raises this tax credit by 5 percentage points too, from 15% to 20%.

Transferability of tax credits granted to energy eaters (electricity and gas) - Article 9

The tax credits already granted this year⁽⁹⁾ to big consumers of electricity and gas can, according to article 9 of the Decree, be used up to 31 December 2022 or, but only in full, transferred.

In order to align this rule with the reliefs available for building renovations, and in the same way as for the tax credits governed by articles 3 and 4 of the Decree, two further transfers are allowed after the first one, but only if the transfers are to a registered bank, insurance undertaking or financial intermediary⁽¹⁰⁾ or to companies that are part of a registered⁽¹¹⁾ banking group. Financial intermediaries authorized to transfer the tax credit after they have purchased it are, however, forbidden⁽¹²⁾ from purchasing the tax credit in the first place if the circumstances require them to report and abstain from a suspicious transaction⁽¹³⁾.

(2) By article 122-bis (4) of Decree Law no. 34/2020.

(3) As per articles 35 and 42 respectively of Legislative Decree no. 231 of 21 February 2007.

(4) The big consumers of gas identified in article 5 of Decree Law no. 17 of 1 March 2022.

(5) By article 4 of Decree Law no. 17 of 1 March 2022.

(6) As defined in footnote 1.

(7) By article 5 of Decree Law no. 17 of 1 March 2022.

(8) As defined in footnote 4.

(9) By article 15 of Decree Law no. 4 of 27 January 2022 and by article 5 of Decree Law no. 17 of 1 March 2022.

(10) In other words, a bank, insurance undertaking or financial intermediary listed in the register referred to in article 106 of Legislative Decree no. 385 of 1 September 1993 (the Banking Act).

(11) In other words, a banking group listed in the register referred to in article 64 of the Banking Act.

(12) By article 122-bis (4) of Decree Law no. 34/2020.

(13) As per articles 35 and 42 respectively of Legislative Decree no. 231 of 21 February 2007.

If the tax credit is transferred, the transferee must request the endorsement of the documentation certifying that the tax credit eligibility requirements have been satisfied.

The tax credit can be used by the transferee in the same way that it would have been used by the transferor and, in all cases, up to the same 31 December 2022 deadline.

The Director of the Italian Revenue Agency will issue guidance on how the rules on the transfers of tax credits will actually be implemented.

IMU tax credit for the tourism industry - Article 22

Article 22 introduces a tax credit for businesses offering tourist accommodation.

Eligible businesses include agritourism enterprises, operators of outdoor facilities, businesses operating in the trade-fair and conference sector, spas and theme parks, including water parks and wildlife parks. The tax credit corresponds to 50% of the second instalment of 2021 municipal property tax (IMU) paid for properties listed as Class D2 in the Property Register and used as accommodation, provided that the owners also manage the businesses and in the second half of 2021 suffered a fall in turnover or in fees of at least 50%, compared with the same period in 2019.

The tax credit:

- can be used only to offset tax bills, from the fiscal year in progress on 22 March 2022;
- is not included in the calculation of the tax base for income tax purposes, net production revenues for IRAP purposes, or the deductibility ratio referred to in articles 61 and 109 (5) of the Italian Income Tax Code.

This support is conditional on its compliance with European legislation and, in particular, with the limits and conditions imposed by the European Commission in the 'Communication from the Commission – Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020/C 91 I/01)'.

Special charge to help combat rising bills - Article 37

The rules introduced by article 37 might be modified during the Decree's conversion into law, given the numerous criticisms levelled at it by industry associations.

Article 37 introduces a special charge for 2022, to be paid by producers, importers and sellers of electricity, gas and petroleum products who have made windfall gains from exploding prices and tariffs in the energy sector. More specifically, the charge must be paid by operators in Italy that, for onward sale, produce electricity, operators that produce methane or extract natural gas, operators that market electricity, methane and natural gas, and operators that produce, distribute and sell petroleum products.

The charge will also be levied on operators that, for onward sale, import such products from third countries or other EU Member States. The charge will not be levied on operators that organize and manage platforms for the exchange of electricity, gas, green certificates and fuel.

The tax base of the special charge is the increase in the balance of sales and purchases between 1 October 2021 and 31 March 2022, compared with the balance of sales and purchases between 1 October 2020 and 31 March 2021. The charge will be 10% in cases where the increase is higher than EUR5 million. It will not be due if the increase is 10% or lower.

To calculate the balances used in the calculations, the total purchases, net of VAT, must be subtracted from the total sales, net of VAT. These figures must be taken from the periodic VAT returns that the business has submitted.

Members of a VAT group must follow a special rule when calculating the balances. In such cases, the summary of the periodic VAT returns, which is submitted by the representative member for the separate taxable entity that is the VAT group, reveals only the sum of the members' individual returns, and not the details of the transactions attributable to the individual members subject to the new special charge.

Therefore, in calculating the balances, VAT group members must use the amounts indicated in the invoices issued and received by the VAT group, which show their tax codes; whereas, in the case of transactions between members of the VAT group, which are irrelevant for VAT purposes, they must use the amounts indicated in their accounting records⁽¹⁴⁾.

The charge must be calculated and paid by 30 June 2022. The Director of the Italian Revenue Agency, after consultation with the Italian Regulatory Authority for Energy, Networks and the Environment (ARERA), will issue instructions on: how to declare and pay the charge; which further details should be included in sale and purchase invoices for electricity and energy products; how to exchange information with the Tax Police.

For the purposes of assessment, application of penalties and collection of the charge, and any related disputes, the rules on VAT will be applied, since they are compatible.

The charge will not be deductible for the purposes of income tax and regional business tax.

To avoid undesirable repercussions for the consumer prices of energy products and electricity, over the period 1 April to 31 December 2022 those required to pay the charge must report, by the end of each calendar month, to the Competition Authority, the average purchase and sale price for electricity, natural gas and methane and petroleum products, for the previous month. The Competition Authority will establish whether there are grounds for adopting the measures that are within its remit.

(14) Held in accordance with Presidential Decree no. 600 of 29 September 1973.

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Tax & Legal Alert / KPMG in Italy / 31 March 2022

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