



Brexit - clarifications on VAT registration for UK businesses

Italy | UK - Post-Brexit News

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Uffici

Milano

Via Vittor Pisani 31, 20124
T: +39 02 676441

Ancona

Via I° Maggio 150/a, 60131
T: +39 071 2916378

Bologna

Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711

Firenze

Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961

Genova

P.zza della Vittoria 15/12, 16121
T: +39 010 5702225

Napoli

Via F. Caracciolo 17, 80122
T: +39 081 662617

Padova

Piazza Salvemini 2, 35131
T: +39 049 8239611

Perugia

Via Campo di Marte 19, 06124
T: +39 075 5734518

Pescara

P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479

Roma

Via Curtatone 3, 00185
T: +39 06 809631

Torino

C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166

Verona

Via Leone Pancaldo 68, 37138
T: +39 045 8114111

On 31 December 2020, the Italian Tax Authority (ITA) published, in an FAQ series, some comments on the VAT registration process for non-established UK businesses following Brexit.

The ITA pointed out that, whilst direct VAT registration (under article 35-*ter* of the VAT Act – Presidential Decree no. 633/72) is always available to businesses established in another EU Member State, businesses established in a country outside the EU can only apply for direct VAT registration if they belong to a state that has signed an agreement for reciprocal assistance in the field of indirect taxation, similar to the administrative cooperation agreements applying within the EU.

So far, the ITA has restricted the possibility of applying for direct VAT registration to EU-established businesses, the only recent exception being for Norwegian businesses.⁽¹⁾

From 1 January 2021 the United Kingdom is outside the EU.

The ITA has stated that, as soon as it has completed its review of the EU-UK Trade and Cooperation Agreement (published on 31 December 2020 in the EU Official Gazette), it will clarify whether a reciprocal assistance agreement exists between the EU and the UK, pursuant to article 35-*ter*, and therefore whether direct VAT registration will be available for non-established UK businesses going forward.

Whilst this review is underway, the ITA has advised that non-established UK businesses registered directly for VAT purposes in Italy should consider:

- ending their direct VAT registration under article 35-*ter*; and
- applying for a new VAT registration number via an Italian fiscal representative.

It is unclear at the moment what the consequences would be for non-established UK businesses that have not appointed a fiscal representative in Italy, should the ITA deny (in the coming weeks or months) the validity of their direct VAT registration.

(1) See Ruling no. 44 of 28 July 2020.

Should the ITA do so, clarification will be needed as to whether non-established UK businesses that have kept their direct VAT registration in Italy after 1 January 2021 will be allowed to recover input VAT incurred between that date and the appointment of a fiscal representative in Italy – also considering that fiscal representatives are not allowed to recover input VAT charged before their appointment.

Hopefully the ITA will shortly confirm whether non-established UK businesses will be allowed to keep their direct VAT registration or will have to appoint a fiscal representative. In this second case, it would be reasonable to expect (although this is still uncertain at the moment) that the ITA will (i) introduce a grace period for non-established UK businesses registered directly for VAT in Italy, (ii) confirm their right to recover VAT incurred between 1 January 2021 and the appointment of an Italian fiscal representative, without the application of any penalties.

Contacts

KPMG in Italy

Davide Morabito

Partner,
VAT Services
T: +39 045 8114 325
E: dmorabito@kpmg.it

Angela Abawi

Senior Manager,
VAT Services
T: +39 045 8114 325
E: aabawi@kpmg.it

kpmg.com/it

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