



# Italy: New VAT measures introduced by the Budget Law 2018 and other legislation

## Tax Alert

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## Budget Law 2018

The Budget Law 2018 (the 'Budget Law') was published in the Official Gazette on 29 December 2017 and came into force on 1 January 2018.

Some of the most important VAT measures are outlined below.

### **No VAT rate increases from 1 January 2018**

As announced in the Government Press Release of 16 October 2017, the VAT rate increases introduced by Law Decree no. 148/2017, which were supposed to apply from 1 January 2018<sup>(1)</sup>, have not come into force.

### **Future VAT rate increases**

The gradual increase in the VAT rates has been postponed to 1 January 2019.

The reduced 10% VAT rate will increase:

- from 10% to 11.5% as of 1 January 2019;
- from 11.5% to 13% as of 1 January 2020.

The standard 22% VAT rate will increase:

- from 22% to 24.2% as of 1 January 2019;
- from 24.2% to 24.9% as of 1 January 2020;
- from 24.9% to 25% as of 1 January 2021.

These VAT increases will not apply if certain budgetary targets are met.

### **Italian VAT grouping rules - 'Skandia' implementation**

The Budget Law implements the principles set out by the European Court of Justice in Case C-7/13 of 17 September 2014 ('Skandia America'). Therefore, head office to branch charges will no longer be disregarded for VAT purposes when the head office or the branch belongs to a VAT group in Italy or another jurisdiction. This means that goods and services provided:

- by a head office (or branch) established in Italy and belonging to an Italian VAT group, to a branch (or head office) established in another State, are deemed to be supplied by the VAT group to a separate taxable person;

(1) See our [Tax Alert of 18 October 2017](#).

- by a head office (or branch) established in another State, to a branch (or head office) belonging to an Italian VAT group, are deemed to be supplied by a separate taxable person to the Italian VAT group;
- by a head office (or branch) established in another State and belonging to a foreign VAT group, to a branch (or head office) established in Italy, are deemed to be supplied by the foreign VAT group to a separate Italian taxable person;
- by a head office (or branch) established in Italy to a branch (or head office) established in another State and belonging to a foreign VAT group, are deemed to be made by a separate Italian taxable person to the foreign VAT group.

The new rules apply to transactions dating from 1 January 2018, although the VAT grouping rules - which were introduced in Italy by the Budget Law 2017 and which can be opted for as of 2018 - will actually be effective in Italy only from 1 January 2019<sup>(2)</sup>.

### **Recovery of VAT charged in error**

Customers are entitled to recover VAT charged in error on out-of-scope, exempt or zero-rated transactions, or charged at an incorrect higher rate, provided that the supplier has remitted the wrongly charged VAT to the Treasury and provided that no fraud is involved.

The customer will only be subject to a fixed penalty ranging from EUR 250 to EUR 10,000.

It is not yet clear whether this new rule will apply retrospectively. Under the previous regime, customers were not entitled to recover VAT charged in error, and faced high proportional penalties for unduly recovering VAT and thus submitting inaccurate VAT returns.

### **E-invoicing extension**

As of 1 January 2019, e-invoicing will become mandatory for all B2B and B2C supplies of goods and services between parties established or VAT-registered in Italy (in the case of B2C, if the customer expressly requests an invoice).

E-invoices will have to be issued:

- through the '*Sistema di Interscambio*' system ('SdI'), which is the platform currently used to transmit e-invoices to public bodies and which will allow the Italian Revenue Agency to automatically collect details of e-invoices;
- in the '*Fattura PA*' format<sup>(3)</sup>, which is the only one currently admitted, although different formats based on European standards might be allowed in the future, if introduced by decree.

Should e-invoices not comply with the above conditions, they will be treated as not having been issued and the (heavy) penalties imposed by article 6 of Legislative Decree no. 471/1997 will apply.

(2) See our [Tax Alert of 19 January 2017](#).

(3) The format is set out in Annex A of Ministerial Decree no. 55 of 3 April 2013.

As of 1 July 2018 e-invoicing will become mandatory for B2B supplies of:

- gasoline or diesel fuel intended for use as motor fuel;
- services rendered by subcontractors under a contract with public bodies.

The deadline for the mandatory issue of e-invoices via the OTELLO system for tax-free shopping (a rule introduced by Law Decree no. 193/2016) has been postponed from 1 January 2018 to 1 September 2018.

### **Further implications of e-invoicing**

As of 1 January 2019, there will no longer be:

- a quarterly obligation (six-monthly for FY 2017) to report details of invoices and customs bills<sup>(4)</sup>;
- a quarterly option to electronically report the VAT details of invoices and customs bills<sup>(5)</sup>.

With regard to the quarterly obligation to report details of invoices and customs bills, the deadline for the second quarter or first six months of FY 2018<sup>(6)</sup> has been postponed from 16 September to 30 September.

### **Monthly reporting of cross-border transactions**

As of 1 January 2019, Italian VAT payers must report the invoice details of cross-border transactions.

VAT payers should file this report by the end of the month following that in which invoices (other than those transmitted through SdI and those for imports documented by customs bills) are issued or received.

A penalty of EUR 2 per invoice (capped at EUR 1,000 per quarter) may apply for failing to submit a report or submitting an incorrect one. However, if the submission is made or amended within 15 days of the deadline, the penalties will be reduced by 50 percent and capped at EUR 500.

### **Monthly transmission of daily payment data by large retailers**

Those large retailers that opted by 31 December 2016 for the 'old' monthly transmission of daily payment data (under Law no. 311/2004) can continue to make these monthly transmissions up to 31 December 2018, rather than 31 December 2017, as previously allowed.

### **'Web tax'**

The Budget Law introduces, from 1 January 2019, a new 3 percent 'web tax' on the electronically supplied services referred to in article 7 of Council Implementing Regulation (EU) No 282/2011<sup>(7)</sup>, when the services are rendered by suppliers (whether or not established in Italy) to Italian companies. Apparently, this new tax should not apply to B2C transactions and e-commerce.

(4) This obligation was introduced by article 21 of Law Decree no. 78/2010, as modified by Law Decree no. 193/2016.

(5) This option was introduced by article 1 of Legislative Decree no. 127/2015.

(6) Law Decree no. 148/2017, subsequently converted into law, stipulates that the report on invoices issued and received can be submitted, for FY 2018, on a six-monthly basis.

(7) Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

The 3 percent rate will be levied on the consideration of each transaction (net of VAT).

Recipients of the services will have to withhold the 3 percent tax from the consideration paid to the supplier, and remit it to the Treasury within the 16<sup>th</sup> day of the month following that in which the payment is made.

The tax applies only to supplies that exceed a threshold of 3,000 transactions per year.

By 30 April 2018 the Italian Finance Ministry should issue an implementing decree to clarify which services are subject to this new tax.

### **Recovery of input VAT on purchases of fuel**

From 1 July 2018, input VAT on purchases of fuel and oil and other services related to means of transport can be recovered only if the payment is made through a credit card, debit card, prepaid card or other similar means of payment, to be identified by the director of the Italian Revenue Agency.

From the same date, for transport fuel sold at gas stations:

- e-invoicing will be mandatory in the case of B2B transactions;
- the supplier will be exonerated from issuing a tax invoice/receipt in the case of B2C transactions.

### **Pharmaceutical paybacks**

The Budget Law clarifies how to recover VAT in the event of paybacks (the payments that pharmaceutical companies have to make when the threshold established by the National Health Service is exceeded). As of 1 January 2018, paybacks are calculated gross of VAT.

### **Removal of fuel products from fiscal warehouses**

Starting from 1 February 2018, there will be new VAT obligations for the removal of fuel and other combustible products (to be identified by a Ministry of Economy and Finance decree) from fiscal warehouses<sup>(8)</sup>.

## **VAT measures outside the Budget Law 2018**

### **Reduced terms for input VAT recovery**

The Budget Law did not amend the tighter input VAT recovery terms introduced by Law Decree no. 50/2017. Therefore, for purchase invoices and customs bills issued from 1 January 2017<sup>(9)</sup> the input VAT must be recovered by the deadline for submission of the VAT return for the year in which the VAT becomes payable (i.e. the year in which the tax point is triggered). This means that input VAT incurred in 2017 will need to be recovered, at the latest, by 30 April 2018.

### **VAT refunds - VAT measures included in the 2017 'European Law'**

Law no. 167/2017 (known as the 'European Law') was published in the Official Gazette on 27 November 2017 and came into force on 12 December 2017.

VAT payers who submit guarantees in order to obtain VAT refunds are entitled to receive a lump-sum indemnity corresponding to 0.15% of the guaranteed amount, for each year of the guarantee. The purpose of this rule is to enable VAT payers to recover part of the costs of obtaining the guarantee.

This indemnity is paid on expiry of the statute of limitations for the year concerned or, if a tax assessment notice has been issued, when the right to obtain the VAT refund has been finally certified by the tax authorities.

The rule will apply to:

- VAT refunds claimed in annual VAT returns, starting from the return for FY 2017;
- quarterly VAT refund claims, starting from the claim for the first quarter of 2018.

In practice, the first indemnities will become due in 2023 (when the statute of limitations for 2017 expires).

### **Change to Intrastat return obligations from 1 January 2018**

Law Decree no. 244/2016 changes the Intrastat return obligations from 1 January 2018.

**Intrastat returns for intra-EU purchases of goods and services** (Intra 2-*bis* and Intra 2-*quater*) should no longer be submitted for tax purposes, but only for statistical purposes on a monthly basis if the purchases amount is, in at least one of the previous four quarters, equal or higher than EUR 200,000 for goods or EUR 100,000 for services (currently, EUR 50,000 for both goods and services).

**Intrastat returns for intra-EU sales of goods and services** (Intra 1-*bis* and Intra 1-*quater*) must still be submitted, for both tax and statistical purposes, by the current deadlines. However, the statistical section of the monthly Intrastat return for intra-Community sales of goods only has to be filled in if the sales amount is, in any of the previous four quarters, equal or higher than EUR 100,000 (currently, EUR 50,000).

As clarified by the Italian Customs Office<sup>(10)</sup>, the new rules will not affect (i) Intrastat obligations related to the last quarter of FY 2017 (in the case of quarterly submission) or December 2017 (in the case of monthly submission), (ii) any returns amending details for periods prior to 1 January 2018.

(8) As per Legislative Decree no. 504/1995 (the Excise Duty Code).

(9) See our [Tax Alert of 27 June 2017](#).

(10) Statement of Practice no. 110586/2017, issued on 9 October 2017.

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