



# Italy: Budget Law 2017 - New Italian VAT measures

## Tax Alert 19 January 2017



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The Budget Law 2017 was published in the Official Gazette on 21 December 2016 and came into force on 1 January 2017. The most important measures include the following.

### VAT grouping rule

Italy introduced new VAT grouping rules effective from 1 January 2018.

VAT group members must be taxable persons (not necessarily companies), established in Italy. Permanent establishments located abroad are ineligible to join. Entities in liquidation or subject to bankruptcy or asset seizure by the judiciary are excluded.

To join the VAT group taxable persons must jointly have financial, economic and organizational links:

- The financial link is one of control, that should have been satisfied as from 1st July of the calendar year before the one in which the option is made (minimum holding period). The person with control must be Italian resident or based in a country which has an exchange of information agreement with Italy.
- The economic link is activity based. Either all members do the same core business, or their activities are complementary/interdependent or the activities benefit the other members.
- The organisational link is one of legal co-ordination between the decision makers.

However in general if a financial link exists the other links are presumed to exist unless an application to the authorities to rule they do not exist is submitted.

### Set up and revocation

A group is set up by all the taxable persons established in Italy who have the necessary links ('*all-in, all-out principle*') making a relevant option that is exercised electronically by the rep member. The timing of this drives the commencement date of the group. An option exercised between October and December means the group does not exist until the start of the second year thereafter - so an option made in October 2018 would mean the group being effective from January 2020 whereas an option made 30 September 2018 would mean the group becomes effective in January 2019.

New members can join once the conditions are met. This requires a declaration to be filed within 90 days of the links coming into existence - the date of joining is the year after the links started.

A failure to make this option by one or more person who should have exercised it means the tax benefit of grouping clawed back and the VAT group ceases from the year following the one when the failure to make the option is ascertained, unless the aforementioned persons exercise the option to join the group itself.

The option is binding for three years and automatically renewed annually thereafter until revoked. Revoking dissolves the whole group. Again the timing of the revocation drives the date the group is dissolved in the same way as the timing of the option drives the start date. Any member which ceases to have the necessary links or to meet the other conditions ceases to be a member.

### **Rep Member responsibilities**

- The rep member is the controlling member or, if the controlling person is not in the group, the one with the highest turnover or revenues.
- The rep member has the main compliance responsibility but all members are jointly and severally liable for VAT debts.
- Intra group transactions are not supplies. External sales and purchases are made by and to the group.

### **Special FS rules**

The special simplified compliance obligations for banks, insurance companies and fund managers are applied even if one of these companies is member of a VAT group.

### **Consolidated VAT regime**

The other consolidated VAT regime provided by art. 73 of the Italian VAT Act remains in force and is alternative to the VAT group regime described above. According to said consolidated VAT regime, companies could consolidate their VAT position in order to offset individuals companies' VAT debts and credits. Thus, the payment and repayment positions of the companies in a consolidated group may be pooled even if each group member has its own VAT number. In such scheme, intra-group transactions are not disregarded in Italy. However, some changes have been introduced by the Budget Law 2017.

As for FY 2017, the option for the consolidated VAT regime should be exercised in the annual VAT return by filing section VG (i.e. not in a separate Form). The option is exercised in the annual VAT return submitted in the FY in which the consolidated VAT regime should start (e.g. the option for FY 2017, should be exercised in the annual VAT return for FY 2016 which is submitted within the end of February 2017).

Moreover, the minimum holding period required for applying to this regime should be satisfied as from 1st July of the calendar year before the one in which the option is made (i.e. not as from the beginning of the calendar year prior to that in which the option is made).

### **Future VAT rate increase**

The 2017 Budget Law provides for a gradual increase in VAT rates from 1 January 2018, as follows:

- the reduced 10 percent VAT rate will increase by three points (from 10 percent to 13 percent) from 1 January 2018;
- the standard VAT rate will increase:
  - from 22 percent to 25 percent from 1 January 2018;
  - from 24 percent to 25,9 percent from 1 January 2019;
- the 'super' reduced VAT rate of 4 percent will remain unchanged.

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

### **Bad Debts**

The 2016 Budget Law introduced the possibility to claim Bad Debt VAT relief at the beginning of the bankruptcy procedure (instead of waiting until the end of the procedure). This provision should have applied to bankruptcy and similar procedures declared after 31 December 2016.

However, the 2017 Budget Law repealed the changes introduced by the 2016 Budget Law, that never came into effect (the 2017 Budget Law, and – therefore - the cancellation of the 2016 changes, entered into force as from 1st January 2017).

It follows that, in continuity with the past, output VAT unpaid by customers under bankruptcy and similar procedures is recoverable only at the end of the procedure.

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