Executive summary

In 2016, Italy enacted new and significant measures \(^1\) (the Fiscal Decree) with respect to the Value Added Tax (VAT) warehousing regime to address tax evasion. On 23 February 2017, a Ministerial Decree - published in the Official Gazette no. 64 of 17 March 2017 - was enacted by the Ministry of Economy and Finance.

Detailed discussion

The new regime

Pursuant to the Fiscal Decree, new rules will be applicable to the VAT warehousing regime in Italy as of 1 April 2017.

Under the new rules, the VAT suspension regime will be expanded to any Italian goods to be introduced into the VAT warehouse. The current limitation to goods listed in Table A-bis attached to the Law Decree no. 331/1993 will no longer be applicable.

In addition, according to the new rules, at the time the goods are withdrawn from the VAT warehouse, for utilization or trading within the Italian territory, the reverse charge should no longer apply as VAT will be due by immediate payment through Form F24 (with right of deduction of such input VAT in the month of payment).
However, the payment obligation above is not required in the following cases:

- Withdrawal of goods previously introduced in the VAT warehouse with European Union (EU) sourcing and the reverse-charge remains applicable
- Withdrawal of goods previously introduced in the VAT warehouse with non-EU sourcing and the reverse-charge remains applicable provided that taxpayers withdrawing the goods file a specific guarantee (a guarantee exemption may apply as explained hereinafter)
- When the taxpayer withdrawing the goods qualifies as the “usual exporter” and files a letter of intent with the VAT warehouse keeper provided that all the necessary requirements are met

Withdrawal of goods previously introduced in the VAT warehouse with non-EU sourcing

According to the recent Ministerial Decree dated 23 February 2017, the reverse charge mechanism can be applied in the case of the withdrawal of goods with non-EU sourcing where a specific guarantee is provided by the taxpayer in favor of the Italian tax authorities.

However, taxpayers can avoid the filing and relevant costs of the above guarantee when:

- They are considered “reliable” according to specific parameters (e.g., timely filing of the annual VAT returns for the three years prior to the withdrawal)
- They have Authorized Economic Operator status in accordance with the Union Customs Code
- They are exempted as taxpayers of proven financial solvency in accordance with Italian customs Laws
- They introduce and withdraw the same goods from the VAT warehouse

If the above requirements are met, the taxpayer withdrawing the goods from the VAT warehouse has to attest to them through the filing of a specific form (affidavit) which must be delivered to the VAT warehouse keeper prior to the first withdrawal of the goods.

The certification to meet the above requirement is in a form which was recently approved and published by the Italian tax Authorities on 24 March 2017 and will have a calendar year validity.

Impact

Application of the new regime is complex both in terms of formalities and interpretation of the Law which is not straightforward in its application. Taxpayers with a supply chain involving the application of the Italian VAT warehousing regime should carefully consider the consequences of the new regime to their operations - including the practical aspects - to better evaluate possible opportunities and prevent disruption to the business.

Endnote

1. Law Decree no. 193, dated 22 October 2016, was converted into Law no. 225, dated 1 December 2016, and published in the Official Gazette n. 282 of 2 December 2016.
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