Executive summary

On 28 December 2015, the Italian Parliament approved the budget law for 2016\(^1\) (the Law), effective from 1 January 2016.

From a value-added tax (VAT) perspective, the most relevant provisions of the Law include:

- Postponement to fiscal year 2017 of the increase in VAT rates originally established by the Budget Law 2015
- Change of statute of limitation rules
- Entry into force of a new penalty regime as from 1 January 2016
- Application of a reduced 4% VAT rate to e-publishing
- Application of reduced 10% VAT rate for marina resort accommodation services
- Introduction of a reduced 5% VAT rate for the provision of services carried out by “Coperative Sociali” to special categories of people
- Application of reverse charge mechanism in the case of provision of services to consortiums rendered by their members in execution of subcontracts towards Public Administrations
- New rules for the issuance of credit notes in case of insolvency procedures starting from 1 January 2017

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\(^1\) 15 January 2016

Indirect Tax Alert

Italy’s Budget Law 2016 amends VAT rules

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Detailed discussion

**Postponement to fiscal year 2017 of VAT rates increase**

The Law postponed to FY2017 the VAT rates increase originally established by the Budget Law 2015. In particular, the Law provides that:

- The VAT rate of 10% will increase by three percentage points as from 1 January 2017.
- The VAT rate of 22% will increase by two percentage points as from 1 January 2017, and of a further one percentage point as from 1 January 2018.

The above increase can be replaced in whole or in part by regulatory measures to ensure, in whole or in part, the same positive effects on the public finances by achieving more revenue or cost savings through rationalization and revision of public spending.

The Law also repeals the increase of excise duties on fuel originally provided for by the Budget law 2015.

**Change of statute of limitations rules**

The Law changes the terms of the statute of limitation rules.

Pursuant to the new provisions, a taxpayer could be subject to a tax assessment up to the end of the fifth year following the filing year of the relevant tax return (the previous term was the end of the fourth year following the filing).

The statute of limitation is extended to seven years in the case of failure to file the tax return (instead of the term of five years provided by the old provisions).

The Law also repeals the doubling of statute of limitation in the case of criminal tax investigations.

The new rules will apply to tax assessments issued by the Italian tax authorities with reference to FY2016 and subsequent ones.

**New penalties related to VAT reverse charge mechanism violations**

The Law advances to 1 January 2016 the entry into force of the new administrative tax penalty regime set by Legislative Decree № 158/2015, originally set for 1 January 2017.

From a VAT perspective, one of the most relevant changes concerns the penalties applicable in the case of violations of the VAT reverse charge mechanism. The previous regime provided for the application of penalties ranging from 100% to 200% (reduced to 3% in some specific cases) for infringements connected to the application of the reverse charge mechanism. Said penalty regime was against the proportionality principle in providing that penalties were in percentage to VAT also if the omission was not causing any harm to treasury.

The new regime provides for the application of fixed amounts of penalties for infringements connected to the application of the reverse charge mechanism. Proportional penalties apply only in limited cases.

Namely, in the case of omitted application of the VAT reverse charge mechanism by taxpayers with full right of VAT deduction penalties are now in a fixed amount ranging from €500 to €20,000.

However, where transactions subject to the reverse charge mechanism are not even registered by taxpayers for general accounting purposes, the Law provides for penalties ranging from 5% to 10% of the taxable amount with a minimum of €1,000.

Moreover, in the above cases, applicable penalties for undue VAT deduction (90%) and for unfaithful annual VAT return filing (from 90% to 180%) are applicable to taxpayers having also omitted the payment of VAT as a consequence of the infringement to the reverse charge mechanism (e.g., taxpayers with limited right of VAT deduction).

Finally, the Law provides new rules also in the case of incorrect application of the VAT reverse charge mechanism by the supplier and/or the purchaser with penalties ranging from €250 to €10,000 (unless in case of fraud intent of the parties, where penalties may apply from 90% to 180% of relevant VAT).

**Application of reduced VAT rate for e-publishing**

The Law widens the scope of application of the reduced 4% VAT rate, already applicable for the supply of e-books, to all other e-publishing materials identified with codes ISBN (International Standard Book Number) and ISSN (International Standard Serial Number). It should be noted that the provision was enacted despite the position taken by the European Court of Justice on e-books taxation against France and Luxembourg (C-479/13 e C-502/13) in March 2015.
Application of reduced VAT rate for marina resort accommodation services

The Law provides the application of the 10% reduced VAT rate for accommodation services rendered by marina resorts starting from 1 January 2016.

New reduced VAT rate for provision of services by Cooperativa Sociali

The Law introduces a new reduced 5% VAT rate (instead of the former 4%) applicable to the provision of social-health and educative services (e.g., medical diagnostics, provision of hospital and care, etc.) by Cooperativa Sociali and their consortiums towards certain category of people.

Cooperativa Sociali are special entities aimed at rehabilitation and care of socially disadvantaged persons, in particular elderly people, disabled persons, drugs addicted and AIDS patients.

Application of reverse charge mechanism in the case of provision of services to consortiums rendered by their members in execution of subcontracts towards Public Administrations

The Law introduces the application of the reverse charge mechanism in the case of provision of services rendered by consortium's members to consortiums acting as contractors towards Public Administrations.

The aim of the new provision is to improve the VAT cash flow of consortiums operating with Public Administrations whose supplies are subject to the special VAT split payment system.

However, the effectiveness of the provision is subject to specific approval by the Council of the European Union.

New rules for issuance of credit notes in the case of insolvency procedures starting from 1 January 2017

Pursuant to the Law, as from 1 January 2017 taxpayers will be allowed to issue credit notes in the case of supplies carried out to customers under insolvency procedures (e.g., bankruptcy, agreements for debt restructuring, etc.) at the start of the relevant procedure rather than at the closing of the latter (as per current regulations).

In addition, the Law provides that in the case of termination of an ongoing contract for non-payment by customers, suppliers can issue credit notes only for the outstanding payments.

Endnotes

2. Law n. 190 of 23 December 2014.
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