



VAT Alert

European Law 2017: guarantee on VAT refunds, repayment of VAT not due and exports for humanitarian purposes

With European Law 2017 (Law 20 Nov. 2017 no. 167, Official Gazette no. 277 dated 27 Nov.2017), concerning “Provisions for the fulfilment of obligations deriving from Italy being a member of the European Union - European Law 2017”, new norms on VAT have been introduced, in order to align the domestic regulation to EU provisions, thus allowing to close infringement or pre-litigation procedures (EU Pilot).

Bank guarantees on VAT refunds

With infringement procedure n. 2013/4080 the EU Commission challenged the Italian rule requiring taxable persons applying for a VAT refund to provide a guarantee, as it lead to them being exposed to high financial risks.

In order to obtain the discharge of this infringement procedure, art. 7 of European Law 2017 provides for the payment of an amount as reimbursement of the costs borne for the guarantee. It further provides for that upon filing a VAT refund application (pursuant to art. 38-bis, para. 4 of Presidential Decree n. 633 of 1972), VAT taxable persons required to provide a guarantee are to be granted an amount equal to 0.15% of the secured amount per each year covered, as a refund of costs borne for the issuance of the guarantee.

This provision will apply starting from 2018 and concerns:

- the yearly VAT refunds emerging from the annual VAT return for FY 2017 (to be filed by 30 April 2018);
- the quarterly VAT refunds filed starting from Q1 2018.

The Revenue Office will refund the taxable persons the amount due as a compensation of the costs incurred:

- at the expiration of the term for the issuance of the adjustment or assessment notice, should this have not been issued;
- upon ascertaining that a refund is due to the taxpayer, in case an adjustment or assessment notice is issued.

Repayment of VAT not due

Art. 8 of European Law 2017 lead to the introduction of the new art. 30-ter in Presidential Decree n. 633 of 1972 (Italian VAT Act), streamlining the procedure for claiming back VAT paid but not due. The provision is aimed at settling the EU Pilot 9164/17/TAXU proceeding, whereby the EU Commission asked Italy for clarifications on the initiatives implemented further to judgement C-427/10 dated 15 December 2011, i.e. case Banca Antoniana Popolare Veneta. In this judgement

the EU Court, though allowing for the possibility of a misalignment between the terms granted to the supplier to obtain the refund of VAT not due from the Revenue Office (2 years from the payment, in compliance with art. 21 of Legislative Decree n. 546 dated 31 December 1992) and the 10 year time-limit granted to the purchaser for the recovery of VAT from its supplier (art. 2033 and 2946 of the Italian Civil Code), underlined the need to grant the supplier the possibility to recover VAT beyond the 2-year term, should it have been subject to an action for the recovery of VAT by the purchaser.

Given the above, the new art. 30-ter of Presidential Decree n. 633 of 1972 sets forth, as a general rule, the possibility for the VAT taxable persons to file a request for refund of VAT within a maximum time-limit of 2 years calculated from the date in which VAT was paid, or from the date in which the prerequisite for the refund occurred, should the latter be subsequent to the payment of VAT. Nonetheless, as an exception to the above, para. 2 of art. 30-ter specifies that, in case of payment of VAT not due relevant to a transfer of goods or provision of services on which the Tax Authorities carried out an assessment, the 2-year term to apply for the refund is calculated starting from the date of the actual refund of the amount paid by the client as a compensation. In any case, the refund of VAT not due will not be granted, should the payment have been made within a tax fraud (see para. 3 of art. 30-ter).

Export of goods for humanitarian reasons

Art. 9 of the European Law introduces letter b-bis) into art. 8 of Presidential Decree n. 633 of 1972, implementing art. 146, para. 1, letter c) of Directive 2006/112/EC, providing for a systematic application of the VAT zero-rate regime (ex para. 5 of Law n. 125 dated 11 August 2014) for the transfer of goods in favour of public administrations and development cooperation organisations, provided that the transferors see (either directly or through third parties

on their behalf) to their transport or shipping outside the EU for humanitarian purposes within 180 days from the delivery within the Italian territory. Evidence of the export will have to be provided through the relevant Customs documentation.

To this end, we specify that among “development cooperation organisations” under art. 26, para. 2 of Law n. 125 of 2014 (“General regulation concerning international development cooperation”) are:

- non-governmental organisations (NGOs) specialised in development cooperation and humanitarian aid;
- not for profit organisations for social utility statutorily aimed at development cooperation and international solidarity;
- fair trade organisations, ethical finance and microcredit institutions, having as their main object stated in the articles of association international cooperation for development;
- organisations and associations of immigrant communities maintaining relationships with their Countries of origin for cooperation and support to development, or collaborating with entities meeting the requirements under the abovementioned art. 26 of Law n. 125 of 2014 and operating in the Countries involved;
- cooperative and social enterprises, trade unions and entrepreneurs organisations, foundations, voluntary associations (Law n. 266 dated 11 August 1991) and associations for social promotion (Law n. 383 dated 7 December 2000), upon condition that development cooperation is included among their institutional purposes in their articles of association;
- organisations with registered office in Italy having a consultative status at the UN Economic and Social Council (ECOSOC) since at least 4 years.

Contacts

Our professionals will be glad to assist you with any further clarification you may need



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