



RSM PALEA LAURI GERLA

Associazione professionale di Studio Palea, Studio L4C, Studio Gerla Associati

TAX NEWS

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FOCUS ON TAX AND ACCOUNTING TOPICS

New Decree on Split Payment

(MEF, i.e. Italian Ministry of Economy and Finance, Decree of July 13th, 2017)

In order to integrate the topic already discussed in the Tax News 2017/6, the Italian Ministry of Economy and Finance has again dealt with the subject "Split Payment" by issuing the Decree of July 13th, 2017. Please find below the news contained in said Decree.

1. Identification of Public Administrations

It is made clear that the "public" subjects involved are the *recipients of the electronic invoicing discipline*; the list of these subjects can be found at the following address:

<http://www.indicepa.gov.it/documentale/index.php>

The invoicing to these subjects will always entail the obligation of electronic invoice and the obligation to apply the Split Payment.

2. Identification of the lists of subsidiary companies operating in the public sector and of listed companies included in the Ftse Mib index

It is stated that the final list of the companies involved will be published annually by the Finance Department by November 15th, with effect from the following year, without the need for approval by means of a specific ministerial decree.

The final list currently on-line concerns:

- a. the companies controlled by the Italian Presidency of the Council of Ministers and by the Ministries and the companies controlled by these latter;
- b. the companies actually controlled by the Italian Presidency of the Council of Ministers and by the Ministries and the companies controlled by these latter;
- c. the companies controlled by regions, provinces, metropolitan cities, municipalities, joint municipalities and companies controlled by these latter;
- d. the listed companies included in the FTSE MIB index of the Italian Stock Exchange

and it is published at the following address:

<http://www.finanze.it/opencms/it/fiscalita-nazionale/Manovra-di-Bilancio-2017/Scissione-dei-pagamenti-d.l.-n.-50-2017-Elenchi-definitivi/>

Finally, it is explained that any mistake in terms of Split Payment application made between July 1st, and July 14th (date of entry into force of the present Decree) will not be subject to sanctions.

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Criminal consequences for the repeated refusal to show accounting records

(Italian Court of Cassation, judgment no. 28069 of June 7th, 2017)

Not "complying" with the requests of the Italian Tax Authorities may lead not only to administrative consequences and tax disputes, but also to the onset of tax crimes.

This is what emerges from a recent judgment by the Court of Cassation with reference to a dispute in which a freelance professional, in the course of the investigations aimed at assessing his professional activity actually carried out in Italy and subject to taxation, following the requests made by the Italian tax inspectors (i.e. Guardia di Finanza), repeatedly refused to show his books, records and accounting documents. Because of this behavior, searches and seizures were carried out, considered as illegal by the professional.

The Supreme Court, supporting the conduct of the investigating bodies, confirmed the important principle of law, according to which the crime of *accounting records concealment* (as per Decree-Law no. 74/2000, article 10) exists also in case of repeated refusal to show the accounting and tax documentation, including the material concealment in a place different from the one where the documents have to be kept.

Please remind that, pursuant to art. 10 of the Decree-Law no. 74/2000:

*Unless the act constitutes a more serious offence, anyone who,
in order to evade income taxes or value added taxes or to allow the evasion to
third parties, conceals or destroys all or part of the accounting records or
documents whose keeping is compulsory,
so that it is not possible to reconstruct the related income or turnover,
is punished with imprisonment from 1 year and 6 months to 6 years*

Finally, it shall be pointed out that:

- the books, records and documents than have not intentionally been showed cannot be considered in favor of the taxpayer for the assessment purpose within administrative cases or litigation. The refusal to show such documents also means the declaration of not possessing books, records, documents and the act of eluding the related inspection (article 32, Italian Presidential Decree no. 600/73 and article 52, Italian Presidential Decree no. 633 / 72);
- anyone who, following the requests made by the Tax Authorities, shows or transmits acts or documents being *false* wholly or in part, or provides untruthful data and information (in this latter case if, following the requests, there is a criminal-tax offense), is criminally liable (article 11 of the Decree-Law no. 201/2011).

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New limits on tax offsetting

As already mentioned in the Tax News 2017/4, the "Manovra correttiva 2017" (i.e. "stabilization package 2017" – Decree Law no. 50/2017) has further tightened the discipline on the free offsetting of tax credits. Provided that the rule refers to the "horizontal offsetting" (i.e. between different taxes), a short operational summary of the current regime is provided below.

VAT credits offsetting

The annual threshold for the free offsetting of VAT credits has been decreased, from the previous Euro 15,000 to the current Euro 5,000.

In case of higher amounts, it is necessary that the *stamp of approval* is affixed to the return where said credit results.

The obligation to affix the stamp concerns both the *annual and interim credit* and therefore the same one may have to be affixed to the annual return or to the request for quarterly refund.

The VAT credit cannot be offset "beyond the threshold" before the return bearing the stamp of approval is submitted, otherwise the offsetting carried out is considered as unlawful: it is necessary to wait until the 10th day following the one on which the return or request from which the credit emerges is submitted, in order to use the VAT credit.

Offsetting of other taxes

The above-mentioned limits to offsetting with regard to VAT also apply to income taxes and to the related surtaxes, to withholding taxes, substitute taxes and IRAP.

With reference to these taxes, it is possible, unlike what happens within VAT, to carry out the offsetting "beyond the threshold", also before the annual return bearing the stamp of approval is submitted.

Affixing of the stamp of approval – Subjects involved

Those subjects who can affix the stamp of approval, provided that a special insurance policy is issued, are the following:

- subjects responsible for tax assistance working in the Italian Tax Assistance Centre – companies;
- chartered accountants and subjects enrolled in the register of labor consultants;
- subjects registered, as of September 30th, 1993, in the roll of experts held by the Italian chambers of commerce, industry, crafts and agriculture for taxes sub-category, possessing a degree in law or economics and business or equivalent degrees or an accounting diploma.

As an alternative to the stamp of approval, taxpayers who are subject to statutory auditing may carry out the offsetting of credits if the return is undersigned by the legal representative as well as by the subjects who undersign the *audit report*.



Affixing of the stamp of approval – Checks to be carried out

INCOME TAXES

The checks to be carried out by the professional responsible for issuing the stamp of approval for direct taxation aim to avoid material and calculation mistakes in determining taxable amounts, taxes and withholding taxes and in carrying forward the surpluses resulting from previous returns.

As mentioned in the circular issued by the Italian Revenue Agency no. 28/E of September 25th, 2014, the issuing of the stamp of approval entails that there is a correspondence between the data indicated in the return and the data resulting from the relevant documentation and the provisions ruling deductible charges, deductions and tax credits, deduction of withholding taxes, payments.

Moreover, with reference, in particular, to the subjects obliged to *keep accounting records*, with reference to tax returns, regional tax on productive activities and withholding agents, the checks entail the following:

- checking the regular keeping of compulsory accounting records;
- checking the correspondence between the data indicated in the return and the amounts resulting from the accounting records and the correspondence between these latter and the relevant documentation;

These checks do not involve any assessment of merit, but only the formal check on the amount of revenue and expense items related to business activity and/or self-employment activity carried out, relevant for income tax and IRAP purposes, as well as the formal check on the amount of the considerations and amounts paid as withholding agent.

VAT

The affixing of the stamp of approval within VAT implies the carrying out of the checks indicated in the Circular no. 57/2009.

Generally, such checks presuppose the following:

- the formal correctness of the returns submitted by the taxpayers,
- the regular keeping of the compulsory accounting records.

More specifically, it is necessary to check the existence of one of the cases that are generally suitable for generating VAT surplus:

- prevalent existence of output VAT transactions subject to rates being lower than those relating to purchases and imports;
- existence of non-taxable transactions;
- existence of purchase or import of depreciable assets;
- existence of non-taxable transactions;
- existence of non-taxable transactions carried out by agricultural producers.



How to manage payments

It is now provided that taxes offsetting (*regardless of the amount*) by subjects holding a VAT number have to occur in a compulsory way and exclusively through the payment electronic services of the Italian Tax Authorities (Entratel – Fisconline), as it is no longer possible to use the home-banking services.

It is also provided that the offsetting payment is rejected if the tax credit used exceeds the maximum amount of those receivables that can be offset (this provision will be enforced with a subsequent provision).

Prohibitions and violations

In cases of incorrect use of offsetting credits in violation of the law, the Italian Tax Authorities proceed to recover the receivables and the related interests, as well as to issue sanctions by notifying a proper act: to such an extent, the prohibition to use the offsetting for the payment of amounts inscribed on the tax roll, on the basis of the recovery of tax credits wrongly used, has been provided.

The professional who has issued an untruthful stamp of approval is subject to the payment of a sanction up to Euro 2,580: in the event of repeated and/or serious violations, the professional is forbidden from issuing any stamp of approval up to 3 years.

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DEADLINES – AUGUST/SEPTEMBER 2017

- this list is not comprehensive of all tax deadlines; the most recurrent administrative deadlines have been omitted
- From January 1st, 2014, the compensation limit has increased from Euro 516.456 to Euro 700.000.
Please remind the following limitations applicable to compensations:

- ☐ in terms of VAT
- ☐ in terms of taxes on income and IRAP
- ☐ in the presence of tax debts entered on the tax roll and expired for amounts exceeding Euro 1,500

AUGUST

Tuesday 1th

Tax disputes and tax fulfillments – suspension of the terms

From this date up to August 31st, pursuant to the Italian Law no. 742/1969, the suspension of the expiration of judicial terms with reference to tax jurisdictions is provided.

This means that the counting of the terms relating to tax disputes (e.g. term for appealing against a notice of assessment, filing documents, appealing to a judgment, etc.) is interrupted throughout the all month of August and resumes from September 1st.

It shall be pointed out that during the “holiday” period, the following fulfillments are deferred:

- payments expiring between August 1st and August 20th are automatically extended to August 20th;
- the terms of 30 days provided for the payment of the amounts due on the basis of notifications of irregularities (“avvisi bonari”, i.e. “tax payment slips”) are “frozen” from August 1st to September 4th; the same “break” is granted with reference to the submission of information and documents required by the Italian Revenue Agency or other Italian tax Authorities (the terms for requests carried out during inspection activities as well as VAT refund procedures are excluded from this break).

Monday 21st

Payment of taxes 2016

(Deferred) deadline for the payment of taxes 2016 and for payments on account of taxes 2017 (with an increase of 0.4%) for business income holders and/or self-employment income holders.

SEPTEMBER

Saturday 30th

(term extend to Monday 2nd of October)

Tax return – submission terms

Term for the electronic submission of the tax returns 2017 of corporations and partnerships (if the related tax year coincides with the calendar year) as well as of individuals.

It should be noted that the MEF, with a press release of July 26th, announced that the above submission deadline, together with the submission deadline of the 770 form, is extended to October 31st, 2017.

Allocation of assets to shareholders – transformations into non-commercial partnerships

By this date, taxpayers wishing to benefit from the favorable rule (article 1, paragraphs 115–120, Law no. 208 of December 28th, 2015, as extended by Law no. 232 of December 11th, 2016), which allows certain companies and in compliance with specific conditions to allocate registered movable and immovable property to the shareholders or to transform real estate commercial companies into non-commercial partnerships, being subject to a favorable tax treatment, proceed with the aforementioned allocations or transformations.

60% of the (ordinary and substitute) taxes resulting from the application of the provision must be paid by November 30th, 2017 and the remaining 40% must be paid by June 16th, 2018.

Voluntary Disclosure 2.0 – submission terms

Deadline for the electronic submission of any request for applying to the procedure, of supplementary documents to the original request (submitted by July 31st).

The "Accompanying Report" should be submitted together with the request.

Scrapping of pending disputes

Deadline for the electronic submission of any request for applying to the procedure of disputes scrapping (article 11, Decree Law no. 50/2017). By this date, the payment of the single or first installment of the amount due must also be carried out.

For more details, see the comments of these Tax News.



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