

Italian criminal tax law: Legislative Decree No. 74 of 2000

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Italian criminal tax law is codified in Legislative Decree No. 74 of 10 March 2000. It distinguishes offences in the declaration from offences in the payment and collection of taxes. The declaration offences are fraudulent declaration through invoices or other documents for non-existent transactions (Art. 2), which has no threshold, fraudulent declaration through other artifices (Art. 3), inaccurate declaration (Art. 4) and omitted declaration (Art. 5). Art. 3 to 5 apply only above thresholds of evaded tax and undeclared income, which Chapter E.II quotes.¹ The payment offences include the omitted payment of certified withholding taxes (Art. 10-bis), the omitted payment of VAT (Art. 10-ter), the undue offsetting of non-existent or non-due credits (Art. 10-quater) and the fraudulent evasion of tax collection (Art. 11). The last offence, *sottrazione fraudolenta al pagamento di imposte*, is committed by a person who simulates the sale of assets or performs other fraudulent acts on his own or others' assets in order to make enforcement ineffective. It is of particular relevance to transfers of assets to Swiss structures after a tax claim has arisen.²

Decree-Law No. 124 of 26 October 2019 increased the penalties for the declaration offences, raising the maximum for fraudulent declaration under Art. 2 to eight years. It also extended to the most serious tax offences the confiscation of assets disproportionate to income (*confisca allargata*, Art. 12-ter) and the corporate liability of companies under Legislative Decree No. 231 of 2001.³ The extension of corporate liability means that an Italian company whose managers commit a fraudulent declaration in its interest can be fined and excluded from public contracts, a risk that concerns Italian groups with Ticino subsidiaries used in invoicing chains.

1 The reform of 2024

The delegating Law No. 111 of 9 August 2023 on the reform of the Italian tax system mandated a revision of the tax penalty system. The government implemented it through Legislative Decree No. 87 of 14 June 2024, published in the *Gazzetta Ufficiale* on 28 June 2024.⁴ The decree amended Legislative Decree No. 74/2000 in several respects. The omitted payment offences now apply only where the tax debt is not being extinguished through an instalment plan. The thresholds remain EUR 150,000 for withholding taxes and EUR 250,000 for VAT, reduced to EUR 50,000 and EUR 75,000 respectively when the taxpayer defaults on an instalment plan.⁵ A new ground of nonpunishability covers omitted payments caused by supervening circumstances not attributable to the offender, including a non-transitory liquidity crisis (Art. 13 para. 3bis), and the decree sets criteria for the assessment of the particular tenuity of the offence (Art. 13 para. 3-ter). Art. 10-quater now defines non-existent and non-due credits, and it excludes punishment where there is objective uncertainty about the specific elements of the entitlement to the credit.⁶

The reform also addressed the relationship between criminal and tax proceedings, which in Italy run in parallel under the principle of the "double track" (*doppio binario*). Under the new Art. 20 para. 1-bis, final judgments in tax proceedings and definitive tax assessments can be used as evidence in the criminal proceedings. Art. 21-bis gives an acquittal in criminal proceedings on the ground that the fact did not occur or was not committed by the accused binding effect in the tax proceedings. Art. 21-ter requires the authorities to take account of the penalties already imposed in the other proceedings, in order to ensure the overall proportionality of administrative and criminal sanctions.⁷ The changes reflect the case law of the European Court of Human Rights and of the Court of Justice of the European Union on the principle of *ne bis in idem* in tax matters.

2 Notes

1. Legislative Decree No. 74 of 10 March 2000, *Nuova disciplina dei reati in materia di imposte sui redditi e sul valore aggiunto*, Arts. 2 to 5, <https://www.brocardi.it/legge-sui-reati-tributari/titolo-ii/capo-i/>; see Chapter E.II for the thresholds of Art. 4 and 5. ↩
2. Legislative Decree No. 74/2000, Art. 11 para. 1 (taxes, interest and penalties above EUR 50,000; imprisonment from six months to four years, from one to six years above EUR 200,000),

<https://www.brocardi.it/legge-sui-reati-tributari/titolo-ii/capo-ii/art11.html>. ↩

3. Decree-Law No. 124 of 26 October 2019, converted by Law No. 157 of 19 December 2019, Art. 39, amending Art. 2 of Legislative Decree No. 74/2000 (imprisonment from four to eight years), <https://www.brocardi.it/legge-sui-reati-tributari/titolo-ii/capo-i/art2.html>, inserting Art. 12-ter (casi particolari di confisca), <https://www.brocardi.it/legge-sui-reati-tributari/titolo-iii/art12ter.html>, and introducing Art. 25-quinquiesdecies into Legislative Decree No. 231 of 8 June 2001, <https://www.brocardi.it/responsabilita-amministrativa-persone-giuridiche/capo-i/sezione-iii/art25quinquiesdecies.html>. ↩
4. "Delega fiscale e revisione del sistema sanzionatorio tributario: pubblicato in G.U. il decreto attuativo n. 87 del 14 giugno 2024", Sistema Penale, 2024, <https://sistemapenale.it/it/notizie/delega-fiscale-e-revisione-del-sistema-sanzionatorio-tributario-pubblicato-in-gu-il-decreto-attuativo-n-87-del-14-giugno-2024> (publication on 28 June 2024; delegation in Art. 20 of Law No. 111/2023). ↩
5. Marco Grotto, "Le recenti modifiche del sistema penale tributario (d.lgs. n. 87 del 2024)", Quotidiano Legale, no. 3/2024, <https://quotidianolegale.it/wp-content/uploads/2024/07/La-recenti-modifiche-del-sistema-penale-tributario-d.lgs.-n.-87-del-2024-1.pdf>; Sistema Penale (above), on the link to instalment plans under Art. 3-bis of Legislative Decree No. 462/1997. ↩
6. Grotto (above), on Art. 13 paras. 3-bis ("cause non imputabili all'autore sopravvenute", including a "crisi non transitoria di liquidità") and 3-ter and on Art. 10-quater ("obiettivo incertezza in ordine agli specifici elementi"); Sistema Penale (above). ↩
7. Sistema Penale (above), on Art. 20 para. 1-bis, Art. 21-bis and Art. 21-ter. ↩

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