

05 September 2024

## New tax penalties regime enters into force

Starting as from September 1, 2024, new regulations regarding tax administrative penalties introduced by Decree No. 87 of June 14, 2024 (“Decree”), have officially come into effect.

The Decree is part of number of regulations that are implementing a broad reform of the Italian tax system.

One of the pillars of the reform was a reduction of penalties aimed at enhancing fairness and proportionality of the system, in line with the EU Charter of Fundamental Rights.

The Decree provides for two major changes: (i) a general reduction of penalties; and (ii) the repeal, with few exceptions, of the previous system which gave to the tax authorities the power to apply penalties within a range – e.g., from 90% to 180% of the higher amount of taxes – in favor of a fixed rate system.

Notwithstanding the above depicted positive changes, according to the letter of the Decree, the new measures of the tax penalties should be applicable to facts and/or omissions occurred as from September 1, 2024 – which is not line with what one would have expected – leaving some doubts with reference to the regime applicable to facts and/or omissions occurred before such date.

There is a principle (*favor rei*), immanent to the system, which should allow, when it comes to changes to the relevant regulations, the application of the most favorable treatment to the taxpayer that has committed the violation. As a result, the new tax penalties measures provided for by the Decree should apply also to facts and omissions occurred before September 1, 2024, as they are more favorable than the ones in force before such date.

Moreover, the delegating law that set out the principles for the reform did not provide for any exception to the *favor rei* principle. It might be possible that the decision of the Government was based on tight budget and still the *favor rei* should prevail.

Given these potential concerns and the significant changes brought about by the Decree, taxpayers are encouraged to review their positions in ongoing tax litigations as there may be ground to argue for the application of the new reduced penalties to the underlying claims.

Furthermore, the Decree introduces changes to the tax criminal law framework. Unlike the tax administrative penalties regulation, the principle of *favor rei* remains fully in force in the tax criminal law, where it is constitutionally protected. Consequently, any changes to criminal penalties must still respect this fundamental principle, and no exceptions have been, nor could have been, made in this regard.

Below a comparative table that shows the pre and post-reform penalties with reference to some of the key tax administrative violations.

Violation (Legislative Decree No. 471/1997)	Penalty before Decree	Penalty after Decree
Omitted tax return (Article 1, para. 1)	120% to 240%	120%

Unfaithful tax return (Article 1, para. 2)	90% to 180%	70%
Unfaithful tax return committed by means of false documentation or nonexistent transactions or fraudulent behaviors (Article 1, para. 3)	135% to 270%	105% to 140%
Omitted tax return by withholding agent (Article 2, para. 1)	120% to 240%	120%
Unfaithful tax return of withholding agent (Article 2, para. 2)	90% to 180%	70%
Omitted VAT return (Article 5, para. 1)	120% to 240%	120%
Unfaithful VAT return (Article 5, para. 4)	90% to 180%	70%
Unfaithful VAT return committed by means of false documentation or nonexistent transactions or fraudulent behaviors (Article 5, para. 4-bis)	135% to 270%	105% to 140%
Violation of obligations relating to documentation, registration and identification of transactions subject to VAT (Article 6, para. 1)	90% to 180%	70%
Omitted issuance of tax receipts or transport documents or the issue of such documents for amounts lower than the actual ones (Article 6, para. 3)	90%	70%
Undue deduction of VAT (Article 6, para. 6)	90%	70%
VAT violations committed by the transferee (Article 6, para. 8)	100%	70%
Late and omitted payments (Article 13, para. 1)	30%	25%
Offsetting undue credits (Article 13, para. 4)	30%	25%
Offsetting nonexistent credits (Article 13, para. 5)	100% to 200%	70%

This document is delivered for information purposes only.  
It does not constitute a basis or guidance for any agreement and/or commitment of any kind.  
**For any further clarification or research please contact:**

**Fabio Chiarenza**  
**Partner**

Head of Tax Department  
Rome  
+39 06 478751 | fchiarenza@gop.it

**Luciano Bonito Oliva**  
**Partner**

Tax Department  
Rome  
+39 06 478751 | lbonitooliva@gop.it

**Alessandro Minniti**  
**Associate**

Tax Department  
Rome  
+39 06 478751 | aminniti@gop.it

**Gaetano Antonio Cinque**  
**Associate**

Tax Department  
Rome  
+39 06 478751 | gacinque@gop.it



**INFORMATION PURSUANT TO ARTICLE 13 OF EU REGULATION NO. 2016/679 (Data Protection Code)**

The law firm Gianni & Origoni, (hereafter "the Firm") only processes personal data that is freely provided during the course of professional relations or meetings, events, workshops, etc., which are also processed for informative/divulgence purposes. This newsletter is sent exclusively to those subjects who have expressed an interest in receiving information about the Firm's activities. If it has been sent you by mistake, or should you have decided that you are no longer interested in receiving the above information, you may request that no further information be sent to you by sending an email to: [relazioniesterne@gop.it](mailto:relazioniesterne@gop.it). The personal data processor is the Firm Gianni & Origoni, whose administrative headquarters are located in Rome, at Via delle Quattro Fontane 20.