

To whom it may concern

Partner di



Of counsel

Dott. Sandro Guarnieri

Dott. Marco Guarnieri

Dott. Corrado Baldini

Dott. Paolo Fantuzzi

Dott.ssa Clementina Mercati

Dott.ssa Sara Redeghieri

Dott.ssa Beatrice Cocconcelli

Dott. Daniele Pecora

Dott.ssa Veronica Praudi

Dott.ssa Federica Lusenti

Dott. Andrea Friggeri

Dott.ssa Martina Carobbi

Avv. Francesca Palladi

Reggio Emilia, Sept. 11, 2024

## MEMORANDUM N. 36/2024

### Insight

#### **Subject: Reform of tax penalties - News of Legislative Decree No. 87 of 14.6.2024**

#### **1 PREMISE**

Legislative Decree No. 87 of June 14, 2024, published in Official Gazette No. 150 of June 28, 2024, reformed the system of administrative tax penalties. A number of criminal penalties were also amended and forms of linking tax proceedings with criminal proceedings were introduced.

One of the salient features of the reform is the general downsizing of the penalties provided for the “basic” hypotheses of the most common violations, just think of omitted declaration, false declaration and invoicing of transactions. Some particularly important institutions have undergone radical reform: think of the undue compensation of taxes, the application of VAT not due or the obligation of the transferee/buyer to regularize violations committed by the other party.

With regard to voluntary compliance, the reductions in applicable penalties are revised and the possibility, albeit under certain conditions, of applying legal cumulation is allowed. In addition, the amounts subject to definition to the third of the penalties may be paid in installments.

Finally, there is no shortage of innovations related to the general part of the penalty discipline, affecting the way in which the penalty is determined.

#### **1.1 EFFECTIVE DATE OF REFORM**

Article 5 of LD. 14.6.2024 No. 87 provides that: *“The provisions of Articles 2, 3 and 4 shall apply to violations committed as of September 1, 2024.”*

It follows from the above that the novelties do not exert any effect on pending judicial relationships, both in terms of the general part and the actual sanctions. Consequently, to give some examples:

- in the case of voluntary repentance, cumulation will be allowed, but the taxpayer will only be able to apply it for violations committed from 1.9.2024 (for violations committed up to 31.8.2024, it will continue to be necessary to individually repay the violations committed);
- the lowering of the penalty from misrepresentation to the minimum amount of 70% operates for violations committed from 1.9.2024, thus from the REDDITI, IRAP and 770 2024 forms (related to the year 2023); when repaying

#### **SGB & Partners**

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

violations committed in previous years (think of REDDITI, IRAP and 770 2023 forms related to the year 2022), the minimum penalty on which to calculate the reduction from repentance will be 90% and not 70%.

## 1.2 CRIMINAL PENALTIES AND THE RELATIONSHIP BETWEEN THE TWO PROCEEDINGS

Some changes concern tax crimes and, especially, the forms of connection between the administrative tax procedure and the criminal trial for tax crimes.

Indeed, it is stipulated, among other things, that the payment of the amounts, useful to benefit from the mitigating circumstance or even from the non-punishability of the crime, will no longer have to be made by the beginning of the criminal trial but by the end of it. In this way, payment timeframes related to the administrative phase (e.g., inherent in the deferral of amicable notices or in the voluntary repentance) will be more compatible with the timing of the criminal trial.

In addition, albeit under certain conditions, it is stipulated that a criminal judgment of acquittal is valid in the tax area and that, in a mirror way, a final tax court judgment or judicial adhesion/conciliation agreement is valid as proof of the fact on the criminal side.

## 2 GENERAL PART

Certain criteria for determining the penalty as well as various institutions governed by Legislative Decree 472/97 inherent in the general part on tax penalties are changed.

As will be seen, a number of aspects relating to voluntary compliance, legal cumulation and continuation, the definition to the third of penalties and the concept of a merely formal violation are modified.

### 2.1 GRADUATION OF PENALTY

The penalty, where provided for by law, can be imposed by taxing bodies within the so-called “edict limit,” thus between the minimum and the maximum specified by the rule. The imposition of the penalty in excess of the minimum must be adequately justified.

Notwithstanding the above, it is provided that:

- the penalty may be reduced to up to one-fourth of the minimum (and no longer up to one-half of the minimum) if there are circumstances that make it disproportionate to the act committed;
- if there are circumstances of particular gravity, the penalty may be increased by up to half.

The above applies to both fixed and proportional penalties.

### 2.2 APPLICATION OF RECIDIVISM

An increase of up to twice the penalty is provided for a taxpayer who, in the 3 years following the res judicata of the judgment establishing the violation or the unenforceability of the act, has incurred a violation of the same nature (e.g., omitted returns repeated over several years).

#### **SGB & Partners**

Sede legale  
Via Meuccio Ruini, 10  
42124 Reggio Emilia  
CF e Piva 01180810358

Tel. +39 0522 941069  
Fax +39 0522 941885  
Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)  
Web [www.sgbstudio.it](http://www.sgbstudio.it)

Compared with the previous text, the increase is no longer “by half” but “up to twice as much” and presupposes the finality of the dispute.

Recidivism does not operate for violations that are the subject of voluntary compliance or adherence to audit reports.

### **2.3 DECLARATIONS OR COMPLAINTS FILED WITHIN THE 30 DAYS**

It is provided that if a declaration or report is submitted within 30 days of the due date, the penalty is reduced to one-third (and no longer half, as in the previous system).

This reduction is provided only if the penalty for the late declaration is not already regulated, so not for income/ VAT and withholding agent declarations, which are the subject of specific regulations, nor for inheritance declarations.

In contrast, the reduction applies for the IMU declaration. If the omitted declaration is submitted up to 30 days late, the penalty is not from 100% to 200% of the tax but from 33.33% to 66.67%.

### **2.4 PURELY FORMAL VIOLATIONS**

Purely formal violations, which must be identified from time to time by the interpreter, do not give rise to penalties. By such are meant those violations that do not cause “concrete” prejudice to the exercise of control actions and do not affect the determination of the tax base, tax and payment of the tax.

It has been specified that the verification on the merely formal character of the violation must take place “in concreto” and not in the abstract. Therefore, it is necessary to verify whether or not in the case under consideration the violation has affected, for example, control activities.

### **2.5 LEGITIMATE EXPECTATION**

A special cause of non-punishment is introduced for a taxpayer who complies with practice directions by submitting, within 60 days after the publication of the practice document itself, a supplementary return paying the tax due.

However, it is necessary that the violation was due to objective uncertainty.

It seems this could be the case when a practice document, on an uncertain issue (likely, qualified as such by the practice document itself), indicates that a certain conduct put in place in the declaration by the taxpayer is not considered correct.

### **2.6 LEGAL CUMULATION AND CONTINUATION**

When the taxpayer commits several violations of the tax law, even in more than one year, the penalties are not, as a rule, added together, since a single penalty is to be applied with the criteria identified in Article 12 of Legislative Decree 472/97.

As a result of this, the taxpayer is charged a penalty that is even far lower than that which could be imposed if it were legitimate to apply the sum of the individual penalties.

#### **2.6.1 Multiple violations committed through separate actions**

#### **SGB & Partners**

Sede legale  
Via Meuccio Ruini, 10  
42124 Reggio Emilia  
CF e Piva 01180810358

Tel. +39 0522 941069  
Fax +39 0522 941885  
Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)  
Web [www.sgbstudio.it](http://www.sgbstudio.it)

If the taxpayer commits, by a single action, several violations of the same or separate provisions, or several violations of the same provision but committed by separate actions, the penalty provided for the most serious violation increased by a quarter to twice as much applies.

In the antecedent context, for the case of different violations of the same provision committed by separate actions, legal cumulation applied only if the violations could be considered “formal.” Thus, they had to be non-substantive violations, a concept never precisely identified by practice or case law.

For violations committed from 1.9.2024, any violation under the terms described will be subject to legal cumulation. Consider, to give a few examples:

- to the submission of several INTRASTAT forms with missing data;
- to distinct omissions in the submission of income/VAT returns by qualified intermediaries (we allude to the intermediaries' own penalties, ranging from 516.00 to 5,146.00 euros, and not to the penalties provided for taxpayers)
- to the non-submission, for several months, of the communications of the relationships held with financial operators.

### 2.6.2 Violations committed in different years

In the so-called “progression of violations,” the taxpayer may commit several violations that tend to affect the tax base or the settlement of the tax.

The classic case is when he fails to invoice a transaction and, as a result, does not indicate that same transaction in the VAT return.

In this case, the penalty provided for the most serious violation increased by one-fourth to twice as much applies.

If violations of the same nature are committed in different tax periods (think of repeated failure to declare for several years), the penalty provided for the most serious violation increased by one-half to three times is applied.

It is specified that in the case of violations of the same nature committed in different tax periods, first the increase from one-half to three times and then the increase from one-fourth to double is applied.

This overcomes the interpretation advocated by some case law according to which only the increase from half to three times should have been applied.

Exemplifying, the penalty provided for the most serious violation increased first from one-half to three times and then from one-fourth to twice as much is applied in the following cases:

- failure to file (or unfaithful filing) of the RW return for multiple years;
- failure to file repeated tax returns over several years;
- submission, for more than one year, of an infidel IMU declaration.

### 2.6.3 Violations committed in relation to multiple taxes

A taxpayer may commit several violations that tend to affect the tax base or tax settlement.

The classic case is when he fails to invoice a transaction and, as a result, does not indicate that same transaction in the VAT return.

#### **SGB & Partners**

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

Partner di



In this case, the penalty provided for the most serious violation increased by one-fourth to twice as much applies.

This violation, often, also has reflection on the tax return so there is the case where the violation affects several taxes. An additional increase of one-fifth should be applied accordingly. If the violation (which is often the unfaithful declaration) is committed in several years, there is yet another increase (from half to three times). It is specified how increases are to be made in situations such as the one shown:

- first, the increase of one-fifth is applied on the penalty for the most serious violation;
- on the resulting figure, the increase from one-fourth to double is made;
- finally, the increase from half to three times is made.

#### **2.6.4 Disbursement and undue compensation violations**

Legal cumulation never applies for violations of omitted, late or insufficient payment of taxes, as well as for undue compensation.

What has been said in case law especially for violations on payments is confirmed. If the taxpayer commits, by several actions or by several actions, separate violations on payments there will be as many penalties as there are late, omitted or insufficient payments.

### **2.7 DEFINITION TO THE THIRD**

With the exception of payment penalties, any tax penalty can be settled to the third by paying what is due within the deadline for appeal.

By doing so, the taxpayer pays the penalties immediately, benefiting from their reduction to one-third, and reserves the right to initiate litigation for the tax.

If only penalties are contested, the settlement of the penalties to the third party consists of a substantial waiver of the appeal.

#### **2.7.1 Installment payment**

Also for violations committed from 1.9.2024, there is a possibility to pay the third of the penalties in installments:

- in 8 quarterly installments of equal amount;
- or in 16 quarterly installments of equal amount, if the amounts together exceed 50,000.00 euros.

No guarantee needs to be given and the first installment must be paid by the appeal deadline.

#### **2.7.2 Definition to the third party when the process is established**

The so-called “procedural acquiescence” is reintroduced, which allows the taxpayer to benefit from the reduction of penalties to the third if, during the trial, the partial annulment of the act intervenes.

This is an institution that had been repealed with effect from last 18.1.2024 and is now reintroduced with minimal differences, for violations committed since 1.9.2024.

#### **SGB & Partners**

Sede legale  
Via Meuccio Ruini, 10  
42124 Reggio Emilia  
CF e Piva 01180810358

Tel. +39 0522 941069  
Fax +39 0522 941885  
Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)  
Web [www.sgbstudio.it](http://www.sgbstudio.it)

Partner di



The prerequisite is to have served an appeal against an assessment, a notice of recovery of tax credit, or a notice of contest of penalties only.

If, after the notice of appeal is served, the tax authority partially annuls the act, the taxpayer may, if he or she waives the appeal in full, pay the remaining tax, interest and penalties reduced to one-third, parameterized to the tax that remains after the self-assessment.

It is not possible to define the penalties to the third party and continue the process by contesting the tax.

Amounts can be paid, without guarantee, in 8 quarterly installments or in 16 quarterly installments if they exceed 50,000.00 euros in total.

## 2.8 LEGAL PERSONS AND COMPANIES

It reiterates a principle that already exists in the system, namely, that sanctions belonging to legal entities (partnerships, corporations, associations, foundations) are imposed exclusively against the legal entity itself.

Consequently, sanctions cannot be imposed on partners, directors and in general on individuals who have acted on behalf of the organization.

However, again reiterating existing principles, it is stipulated that:

- the “exclusive” liability of the legal entity does not exist if it is proven that it was artificially created to commit torts;
- there remains the joint, subsidiary and unlimited liability of partners of general partnerships and general partners of limited partnerships for violations committed by the company.

## 3 TAX AMENDS

The reform made several changes in the area of tax amends, among which emerges the possibility of applying the legal cumulation of violations, albeit under certain conditions.

As with all other changes, they do not operate for pending reports but only for violations committed on or after 1.9.2024.

Consequently, with regard to declarative violations (omitted declaration, unfaithful declaration), they operate starting from the REDDITI, IRAP and 770 2024 forms (related to the year 2023), while if it is necessary to remediate infidelities committed in earlier years (think of the unfaithful VAT 2024 declaration, related to the year 2023), the old penalties and reductions of the penalties from repayment must be considered.

### 3.1 PENALTY REDUCTION

Regarding the reduction of penalties, the “intermediate” level that involved the reduction of penalties to 1/7 is eliminated in the terms that are about to be set forth. The reduction to 1/7 remains, but acquires a greater scope of application.

For violations committed until 8/31/2024, in fact, if the reprimand is made:

- within 90 days of the commission of the violation or the deadline for submission of the declaration, the reduction of the penalty is to 1/9 of the minimum (Art. 13 co. 1 lett. a-bis) of DLgs. 472/97);

### SGB & Partners

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

Partner di



- within the deadline for submission of the declaration of the year in which the error was committed or within one year of the violation, the reduction of the penalty is 1/8 of the minimum (Art. 13 co. 1 lett. b) of DLgs. 472/97);
- within the deadline for submission of the declaration of the year following the year in which the error was committed or within 2 years of the violation, the reduction of the penalty is to 1/7 of the minimum (Art. 13 co. 1 lett. b-bis) of Legislative Decree 472/97);
- beyond the deadline for the submission of the declaration of the year following the year in which the error was committed or beyond 2 years from the violation, the reduction of the penalty is to 1/6 of the minimum (art. 13 co. 1 lett. b-ter) of Legislative Decree 472/97).

In contrast, for violations committed from 1.9.2024, if the reprimand is made:

- within 90 days from the commission of the violation or the deadline for submission of the declaration, the reduction of the penalty is to 1/9 of the minimum (Art. 13 co. 1 lett. a-bis) of Legislative Decree 472/97);
- within the deadline for submission of the declaration of the year in which the error was committed or within one year of the violation, the reduction of the penalty is 1/8 of the minimum (Art. 13 co. 1 lett. b) of DLgs. 472/97);
- beyond the deadline for submission of the declaration of the year in which the error was committed or beyond one year from the violation, the reduction of the penalty is to 1/7 of the minimum (Art. 13 co. 1 lett. b-bis) of DLgs. 472/97).

The above applies to all violations (payments, billing, returns, communications) related to any tax and any taxing entity.

The following provisions, however, remain unchanged:

- Art. 13 co. 1 lett. a) of Legislative Decree 472/97, which provides for only violations on payments the reduction of the penalty to 1/10 of the minimum if the reprimand occurs within 30 days from when the violation was committed;
- Art. 13 co. 1 lett. c) of DLgs. 472/97, which provides for the reduction to 1/10 of the minimum of the penalty for omitted declaration, stipulating, however, that the repentance can in this case take place only within 90 days from the relevant deadline for submission.

## **SGB & Partners**

Sede legale  
Via Meuccio Ruini, 10  
42124 Reggio Emilia  
CF e Piva 01180810358

Tel. +39 0522 941069  
Fax +39 0522 941885  
Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)  
Web [www.sgbstudio.it](http://www.sgbstudio.it)

## **3.2 REPENTANCE IN THE PRESENCE OF TAX AUDITS**

For taxes administered by the Internal Revenue Service, customs and excise taxes, the rule remains that voluntary repentance is not inhibited by the tax audit (e.g., by the service of a questionnaire or invitation to appear) but only by the service of the taxable act (assessment, recovery of tax credit) or the amicable notice.

Without prejudice to the reductions indicated in § 3.1 above (from 1/10 of the minimum to 1/7 of the minimum, depending on the violation and when you repent), for violations committed from 1.9.2024 if the repentance occurs:

- after the outline of the act instrumental to the preventive cross-examination not preceded by the report of findings and without an

Partner di



application for adherence, the reduction of the penalty is to 1/6 of the minimum (art. 13 co. 1 letter b-ter) of Legislative Decree 472/97)

- after the report of findings without sending the notice of adherence to the report of findings and in any case before the outline of the act instrumental to the preventive cross-examination, the reduction of the penalty is to 1/5 of the minimum (art. 13 co. 1 lett. b-quater) of Legislative Decree 472/97);
- after the outline of the act instrumental to the preventive cross-examination preceded by the report of findings and without application for adherence, the reduction of the penalty is to 1/4 of the minimum (art. 13 co. 1 lett. b-quinquies) of Legislative Decree 472/97).

Thus, repentance is inhibited by both the application for adhesion and the notice of adherence to the report of findings.

For violations committed until 8/31/2024, the reduction to 1/5 of the minimum penalty remains if the repentance is made in the presence of the report of findings, regardless of whether or not there has been the outline of the measure implementing the adversarial process (art. 13 co. 1 lett. b-quater) of Legislative Decree 472/97).

### 3.3 LEGAL CUMULATION AND CONTINUATION

In the case of multiple violations, the law, as a rule and under certain conditions, provides that the penalties are not added together but “legally cumulated.” In fact, the penalty stipulated for the most serious violation increased by a quarter to double is applied.

For violations committed from 1.9.2024, the legal cumulation can also be applied in the case of an automatic repentance but limited to the individual year and individual tax (this greatly reduces its scope of application).

In addition:

- the increase from cumulation must be in the minimum amount, thus by one quarter;
- the reduction of the penalty resulting from the voluntary repentance is determined in relation to the first violation.

Assume that a taxpayer fails to invoice various transactions, thus committing three infidelity returns (VAT, income tax, and IRAP) and multiple violations on invoicing.

Accumulation operates limited to the single tax and single year, thus between the violations on invoicing and between these violations and the VAT infidelity declaration alone.

Consequently, if one commits an omitted invoicing in October 2024 transposed in the VAT return 2025 (related to the year 2024):

- assuming that the “basic” penalty of 70% (VAT misrepresentation) is applied, this must be increased by a quarter, thus becoming 87.5%;
- the reduction in the penalty for repentance should be calculated with reference to the omitted invoicing (if one repents in October 2025, for example, the penalty of 87.5% should be reduced to 1/7 and not 1/8, since

#### **SGB & Partners**

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)



this is a repentance that took place after the deadline for submission of the VAT return for the year in which the violation from omitted invoicing was committed).

There may be help from applications that will be made available by the Internal Revenue Service, but certainly it will be necessary to carefully contextualize each situation.

#### 4 REPORTING VIOLATIONS

Penalties for tax return violations (mainly, failure to file and misrepresentation) have been lowered.

These changes, operating for violations committed from 1.9.2024, take effect from the 2023 income, IRAP and 770 2024 tax returns. They do not, on the other hand, operate for the 2024 VAT return (also relating to the year 2023), the filing deadline for which has now expired.

The following considerations, albeit with some particularities related to the individual tax, apply to the income tax return, the VAT return, the IRAP return, and the withholding agent's return (Form 770).

The following penalties have not been changed:

- the omission or irregular filling in of the RW panel, which remains sanctioned to a variable extent from 3% to 15% of the undeclared values (doubled if the possessions are held in “tax havens”);
- the so-called “inaccurate” declaration, i.e., affected by errors that do not affect the tax but only the controls, which remains sanctioned to an extent varying from 250.00 to 2,000.00 euros;
- the omission or late transmission of declarations by qualified intermediaries, which remains sanctioned to a variable extent from 516.00 to 5,146.00 euros.

##### 4.1 OMITTED DECLARATION

Failure to declare is sanctioned to the extent of 120% of taxes due, with a minimum of 250.00 euros. Previously, the penalty could be from 120% to 240% of the taxes due with a minimum of 250.00 euros.

There is no change in the penalty for omitted declaration from which no taxes are due, which continues to be from 250.00 to 1,000.00 euros for income and IRAP declaration and from 250.00 to 2,000.00 euros for VAT and withholding agent declaration.

It remains that the return is also considered omitted if it is submitted more than 90 days late.

##### 4.1.1 Statement submitted within the assessment deadline in the absence of checks

#### SGB & Partners

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

If the return is filed after the 90 days but within the assessment deadline and in any case before any tax audit (e.g., before a questionnaire is served), the penalty is not 120% but 75% of the tax due.

Under the previous system, if the return was filed after the 90 days but by the deadline for filing the return for the next tax period, the penalty was halved and thus became 60% to 120% of the tax due.

Remaining unchanged, on the criminal side, is the cause of non-punishability of the crime of omission of declaration (configurable if the threshold of 50,000.00 euros of tax is exceeded), which occurs when, prior to a tax or criminal inspection, the declaration is submitted by the deadline for the submission of that for the following tax period and taxes, penalties and interest are paid in full.

#### **4.1.2 Statement submitted within 90 days**

There is no express regulation of the penalty provided for the declaration submitted with a maximum delay of 90 days.

The practice of the Internal Revenue Service, which considers a return submitted within 90 days as repayable by paying a penalty of 25.00 euros (in addition to the payment of taxes, legal interest and the repayment of any late payments of taxes resulting from the return).

## **4.2 UNTRUE STATEMENT**

A declaration is considered “infidel” when, for an infinite number of reasons, it is submitted indicating a tax due that is lower than the actual tax due: this may be a failure to declare income, deduction of non-inherent costs, failure to declare revenue/income, and so on.

Declaratory infidelity is sanctioned to the extent of 70% of the tax due, with a minimum of 150.00 euros. Previously, the penalty could be from 90% to 180% of the taxes due.

In addition to that:

- if the infidelity is due to fraudulent or simulated conduct, the penalty is increased by a variable amount from 105% to 140% of the tax, and no longer from 135% to 270% of the tax (if the VAT return is involved, the increase is applicable only if the participation in the fraud of the transferee/buyer is proven);
- the one-third reduction of the penalty remains if the higher tax or lower credit assessed is altogether less than 3% of the tax and credit declared and in any case altogether less than 30,000.00 euros;
- there remains the doubling of the penalty for failure to declare rents subject to the dry coupon tax, a penalty that can be from omitted declaration (if the rents have not been declared) or from unfaithful declaration (if the rents have been declared but only in part);
- the one-third increase for undeclared foreign income is waived.

#### **4.2.1 Supplementary statement filed within the assessment deadline in the absence of audits**

### **SGB & Partners**

Sede legale  
Via Meuccio Ruini, 10  
42124 Reggio Emilia  
CF e Piva 01180810358

Tel. +39 0522 941069  
Fax +39 0522 941885  
Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)  
Web [www.sgbstudio.it](http://www.sgbstudio.it)

If, within the assessment period but prior to any tax audit (e.g., prior to the service of a questionnaire), a supplementary return is filed, the penalty is not 70 percent but 50 percent of the tax due (still with the minimum of 150.00 euros).

In the previous system, this issue was not regulated.

#### **4.2.2 Declaration remedied within 90 days**

There is no regulation of the penalty provided for an unfaithful declaration remedied within 90 days of the filing deadline.

The practice of the Internal Revenue Service, which considers the declaration remedied within the 90-day period by paying a penalty of 27.78 euros (in addition to the payment of taxes, legal interest and the remediation of any late payments of taxes resulting from the declaration).

#### **4.2.3 Errors on fiscal competence**

There remains the special penalty discipline for misrepresentation resulting from errors in period allocation of income components, or from violation of the “cash” principle.

In general, if there has been a violation of the tax accrual or “cash” principle, the penalty is reduced by one-third and thus becomes 46.67 percent of the tax due.

If there was no damage to the Treasury (think of a revenue declared in advance, which resulted in the “advance” collection of taxes) the penalty is fixed, at 250.00 euros.

### **5 VAT VIOLATIONS**

Penalties for VAT-related violations have been made less onerous overall.

These are heterogeneous penalties, which can cover invoicing, telematic transmission of receipts, exports and intra-Community supplies.

All the changes operate for violations committed from 1.9.2024, so, taking the case of omitted invoicing, starting with invoices that should have been issued from September 2024.

#### **5.1 INVOICING OF TRANSACTIONS**

Failure to pay, false or incorrect billing is punished to the extent of 70% of taxes due. Previously, the penalty could be from 90% to 180% of the taxes due.

In addition:

- the minimum penalty for each transaction has been lowered from 500.00 euros to 300.00 euros (the minimum must be taken into account in the case of an industrious repentance);
- the penalty of 250.00 to 2,000.00 euros remains if the invoicing violation did not affect the periodic settlement;
- for exempt, nontaxable or excluded transactions, the infidelity in the indication of the consideration or the omission of invoicing is no longer sanctioned from 5% to 10% of the consideration if the violation had an impact on direct taxes, but in the amount of 5% (the penalty of 250.00 to 2,000.00 euros remains if the violation does not even affect the determination of income).

#### **SGB & Partners**

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

Nothing was specified on the relationships between violations on invoicing, possible late/incorrect VAT payment in periodic settlement and false declaration.

Practice guidelines on the topic remain, therefore.:

- the violation on invoicing or transmission of receipts, if not transposed in the declaration or if remedied before the annual declaration, also gives rise to a failure to pay periodic VAT sanctioned at the rate of 25% or 12.5% (if the late payment is contained within 90 days);
- the violation on invoicing if transposed in the declaration is not absorbed by the unfaithful declaration but is to be “unified” due to the effect of cumulation (the offices apply the penalty provided for the most serious violation increased by a quarter to double).

### 5.1.1 Telematic receipts

The omitted, false or incorrect telematic transmission of receipts (used, mainly, by retailers) is sanctioned to the extent of 70 percent of the taxes due (before, the penalty was 90 percent). In addition:

- the minimum sanction for each transaction has been lowered from 500.00 euros to 300.00 euros (the minimum must be taken into account in the voluntary tax amends);
- the fixed penalty of 100.00 euros per transmission remains if the violation did not affect the VAT settlement (a maximum limit of 1,000.00 euros per quarter is introduced);
- the accessory sanction of the closure of business premises from 3 days to one month remains if four separate violations of the obligation about the storage/transmission of the fees, carried out on different days, have been contested during a five-year period.

### ***Contestation of the sanction***

As a rule, tax penalties must be contested either together with the assessment or by Dec. 31 of the fifth year following the year in which the violation was committed. A shorter deadline of 90 days from when the violation is found to have been committed is set for violations of omitted, false or incorrect telematic transmission of receipts.

The “ascertainment” occurs when officials from the Internal Revenue Service or the Guardia di Finanza, during on-site inspections, ask the customer to produce the receipt that should have been issued by the merchant.

### 5.1.2 Reverse charge

Failure to *reverse charge* is punished with a penalty of 500.00 to 10,000.00 euros (and no longer 500.00 to 20,000.00 euros).

Also in the case of failure to *reverse charge*, if the transaction does not even show up in the accounts for income tax purposes, the penalty is 5 percent of the taxable amount, with a minimum of 1,000.00 euros (and no longer 5 percent to 10 percent of the taxable amount, with a minimum of 1,000.00 euros).

### **SGB & Partners**

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

Instead, the penalty of 250.00 to 10,000.00 euros remains unchanged, with solidarity, depending on the case, of the transferor/supplier or the transferee/buyer for cases in which the *reverse charge* is not applied (invoice issued in error with VAT) or when it is unduly applied (invoice issued in error without VAT).

## 5.2 WRONGFUL DEDUCTION

The undue deduction of VAT at periodic settlement is sanctioned to the extent of 70% of the tax due (previously, the sanction was 90%).

This violation occurs when the taxable person computes in the periodic settlement a VAT that, for a variety of reasons, cannot be deducted, for example, because it relates to a non-inherent cost or because of specific nondeductibility.

### 5.2.1 Undue deduction transposed in declaration

The violation on undue deduction, if implemented in the declaration is absorbed by the unfaithful declaration.

Unlike in the past, therefore, the two penalties (undue deduction and unfaithful declaration) are no longer to be “unified” as a result of accumulation. Offices used to apply the penalty provided for the most serious violation increased by a quarter to double; in the future, only the penalty from unfaithful declaration, punished to the extent of 70% of the tax, with a minimum of 150.00 euros, must be applied.

### 5.2.2 Application of a VAT not due

It may happen that, by mistake, VAT is charged on an invoice on transactions that, in reality, are exempt, nontaxable or excluded from tax or, more simply, VAT is charged on taxable transactions by applying a higher rate (e.g., 22 percent and not 10 percent).

The transferee/buyer, who receives the invoice, cannot deduct the tax and, if he has already paid it to his supplier, must claim it back.

If the deduction is equally exercised and except in cases of fraud:

- this is unlawful, so the VAT can be recovered by the Internal Revenue Service plus statutory interest (in other words, the deduction is recognized only for the correct amount);
- there is not the common 70% penalty from undue deduction, but a penalty of 250.00 to 10,000.00 euros, if the VAT was nevertheless paid by the other party (thus duly registered and paid to the Treasury by the other party);
- the violation on undue deduction, if transposed in the declaration is absorbed by the unfaithful declaration.

## 5.3 REGULARIZATION OF THE TRANSFEREE/BUYER

In case of omission of invoicing or invoicing with lower amounts or with an incorrect rate, the one who receives the invoice, if a VAT taxable person (the so-called “transferee/buyer”) has the obligation to regularize the transaction, reporting this to the Internal Revenue Service.

If the regularization does not take place, a penalty equal to 70% of the tax (and no longer equal to 100%), with a minimum of 250.00 euros, is provided for, without prejudice to the liability of the assignor/supplier.

### SGB & Partners

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

Partner di



### 5.3.1 Regularization without penalties

The procedure for regularization of the transferee/buyer is radically changed, which, if complied with and put in place within the legal deadlines, exempts the latter from any penalty.

In the predecessor context, the penalty could be avoided if the transferee/buyer regularized according to the following procedures:

- if he had not received the invoice, within 4 months from the date of the transaction, by submitting telematically, upon payment of the VAT, within the 30th day following the invoice, a document equivalent to the invoice;
- in case of an irregular invoice, by submitting, within the 30th day after registration, the above document, upon payment of the tax.

The regularization will be much simpler, as the transferee/buyer will have to report the omission or irregularity to the Internal Revenue Service (by electronic means that will be made available by it, reasonably on the “Invoices and Considerations” portal) within 90 days from when the invoice should have been issued or from when the irregular invoice was issued.

### 5.3.2 Syndication of counterpart evaluations

Case law, for years now, has been consistent in stating that the transferee/buyer can only be sanctioned if there was an omitted invoicing or if the error, for example in having applied a lower rate, was really obvious.

The transferee/buyer, in other words, did not have to review the assessments of the tax treatment of the transaction made by the other party.

For violations committed since Sept. 1, 2024, the exclusion of the union seems to be limited to non-taxability, exemption and exclusion from VAT arising from subjective conditions of the counterparty that cannot be directly verified.

In contrast, it seems that the union will have to be there for situations other than those listed, such as for the error on the VAT rate

## 5.4 OTHER VIOLATIONS

Regarding other VAT violations, the following should be noted:

- obtaining a refund that is not due (we allude to the refund from annual return obtained in the absence of the legal requirements), is punished to the extent of 25% and no longer 30%;
- failure to export the goods within 90 days of delivery is punished to the extent of 50% of the VAT, and no longer 50% to 100% (this refers to the supply of goods with transport or shipment outside the EU, by or in the name of the nonresident transferee);
- invoicing without VAT in the presence of a false declaration of intent, or the use of the so-called “plafond” in excess of the permitted amount are punished to the extent of 70% of VAT, and no longer from 100% to 200%;
- failure by the supplier to verify that the counterparty has forwarded the letter of intent to the Treasury is punished to the extent of 70% of VAT, and no longer from 100% to 200%.

### **SGB & Partners**

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

Partner di



## 6 PAYMENT VIOLATIONS

Those who fail to make all or part of tax payments by the prescribed deadlines were punished (for violations committed until 8/31/2024) with a penalty of 30 percent or 15 percent for each unpaid amount (for delays contained in 90 days).

For violations committed from 1.9.2024:

- the penalty has been lowered from 30% to 25%;
- as a result, the penalty for late payment contained within 90 days is no longer 15% but 12.5%;
- in similar terms, the reduction to 1/15 per day late, operating for late payments contained in 14 days, will be applied on 12.5 percent and no longer on 15 percent.

These changes operate, for example, for monthly VAT for August or for withholding taxes made in August, which must be paid by 9/16/2024. Should the deadline not be met, for the purpose of remediation the penalty will be 12.5 percent or 25 percent.

## 7 COMPENSATION VIOLATIONS

Wrongful offsetting of taxes continues to have a different penalty treatment depending on whether it involves nonexistent credits or credits that are not due.

Specifically:

- undue offsetting of nonexistent credits will be punished to the extent of 70% of the credit, and no longer from 100% to 200%;
- the 70% penalty will be increased by half to double if the objective and subjective requirements to benefit from the credit are the subject of fraudulent representations, implemented by materially or ideologically false documents, simulations or artifices;
- undue offsetting of undue credits will be punished to the extent of 25 percent of the credit, and no longer 30 percent.

Recall that for nonexistent credits, the recovery notice may be served by the increased deadline of December 31 of the eighth year following the year in which the offset occurred. Even for nonexistent credits, however, settlement to the third of the penalties is allowed, with the process being able to continue for the tax.

This is an issue that often concerns credits arising from special legislation such as the research and development bonus, which must be reported in the RU framework of the REDDITI form.

### SGB & Partners

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)

### 7.1 NOTION OF NON-EXISTENT AND UNDUE CREDIT

Under the new provisions, non-existent credits are defined as:

- credits for which all or part of the objective or subjective requirements specifically indicated in the relevant regulatory framework are missing;
- credits for which these objective and subjective requirements are the subject of fraudulent representations, implemented with false documents, simulations or artifices.

Partner di



In contrast, unearned credits are defined as:

- credits used in violation of the terms of use or, for the relevant excess, those used in excess of the permitted amount;
- credits that, in the presence of the subjective and objective requirements set forth in the relevant discipline, are based on facts not covered by the discipline itself due to the lack of additional elements or special qualities required for the recognition of the credit;
- credits used in defect of the prescribed fulfillments provided for under penalty of forfeiture.

Compared to the previous system, the notion of nonexistent credit is defined more precisely; in fact, previously, credit for which the constitutive presupposition was lacking, in a very general way, was nonexistent. As far as nonexistent credits are concerned, the peculiarity consisting in the fact that credits, even if nonexistent, were considered as such, but which could emerge from automatic liquidation or formal control of the declaration.

## **7.2 FORMAL VIOLATIONS REMOVED WITHIN THE YEAR NOT PROVIDED FOR UNDER PENALTY OF FORFEITURE**

A penalty of 250.00 euros is provided if the credit is offset in default of the prescribed fulfillments (think of a prior application for offsetting), provided that:

- the fulfillment is not prescribed under penalty of forfeiture;
- the violation is remedied within the deadline for filing the tax return for the year of commission of the violation or within one year of the violation.

Where compliance is not provided for under penalty of forfeiture, the credit is disallowed if removal is not made within the specified time limit.

## **8 REGISTRATION TAX VIOLATIONS**

Regarding registration tax violations:

- failure to register will be punished with a penalty of 120% of the tax (and no longer from 120% to 240%);
- late registration contained within 30 days will be punished to the extent of 45% of the tax without any minimum (and no longer from 60% to 120% with a minimum of 200.00 euros);
- insufficient declaration of value will be punished to the extent of 70% of the tax (and no longer from 100% to 200%);
- concealment of consideration will be punished with a penalty equal to 120% of the tax (and no longer from 120% to 240%).

## **9 INHERITANCE TAX VIOLATIONS**

Regarding inheritance tax violations:

- failure to declare inheritance tax will be punished to the extent of 120% of the tax (and no longer 120% to 240%);
- late declaration of inheritance contained within 30 days will be punished to the extent of 45% of the tax (and no longer from 60% to 120%);

### **SGB & Partners**

Sede legale

Via Meuccio Ruini, 10

42124 Reggio Emilia

CF e Piva 01180810358

Tel. +39 0522 941069

Fax +39 0522 941885

Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)

Web [www.sgbstudio.it](http://www.sgbstudio.it)



Partner di



- the penalties for omitted or late declaration from which no tax arises remain unchanged (from 250.00 to 1,000.00 euros, or from 150.00 to 500.00 euros for delays not exceeding 30 days);
- the infidel inheritance declaration will be punished with a penalty of 80% of the tax (and no longer from 100% to 200%);
- failure to apply for compulsory transcripts or registrations for the purposes of mortgage and cadastral taxes will be punished with a penalty equal to 80% of the tax (and no longer from 100% to 200%). If the request is submitted no more than 30 days late, the penalty will be 45% of the tax due (and no longer 50%).

## 10 MINOR TAX VIOLATIONS

Finally, the following novelties regarding minor taxes should be noted:

- failure to pay the stamp duty due from the outset will be punished with a penalty of 80% (and no longer from 100% to 500% of the tax);
- the omission or misdeclaration of adjustment for the purpose of the so-called “virtual stamp duty” will be punished with a penalty of 80% (and no longer from 100% to 200% of the tax);
- the adjustment statement submitted with a delay not exceeding 30 days will be punished with a penalty of 45% of the tax (and no longer 50%);
- for those who exercise an activity without having paid the government concession tax there will be a penalty of 90% with a minimum of 100.00 euros (and no longer from 100% to 200% of the tax). The above is relevant, for example, on the subject of tax on company books.

The Firm remains available for any clarifications.

Best regards.

***SGB & Partners - Commercialisti***

### **SGB & Partners**

Sede legale  
Via Meuccio Ruini, 10  
42124 Reggio Emilia  
CF e Piva 01180810358

Tel. +39 0522 941069  
Fax +39 0522 941885  
Mail [info@sgbstudio.it](mailto:info@sgbstudio.it)  
Web [www.sgbstudio.it](http://www.sgbstudio.it)