

LEGAL ALERT

Issue:
January
2020

**ADDITIONAL PROVINCIAL TAXES
ON EXCISE DUTIES ON
ELECTRIC POWER HAVE BEEN
ABOLISHED: IT IS STILL
POSSIBLE TO CLAIM REFUND**

www.roedl.com – www.roedl.it



→ Legal Alert

Additional provincial taxes on excise duties on electric power have been abolished: it is still possible to claim refund

In 2011, the European Commission identified an incompatibility between the European and Italian regulations regarding the application of additional provincial taxes on excise duties on electric power (equal to: from 9.3 to 11.4 € / MWh for consumption up to 200,000 kWh / month, **for a maximum annual amount of approximately € 25,000.00 for each meter**).

Therefore, Italy abolished the additional provincial taxes with effect from 1 January 2012.

Following the action brought before Court for the purpose of recovering the amount unduly paid, recently the Italian Supreme Court (with the rulings no. 27099/2019 and no. 27101/2019 of the 23 October 2019), declared the inapplicability of the provisions establishing the provincial additional tax on the excise on electricity (as said abolished in 2012), as not consistent with EU legislation (European Directive 2008/118 / EC), confirming the right to request refund of the amounts unduly paid. Consequently, **any company that paid the aforementioned additional taxes (generally recharged by the supplier in the bill) in years 2010-2011, may claim the refund from the company providing the energy for the refund of the amounts unduly paid.**

Specifically, with the aforementioned rulings, the Supreme Court has recalled and stated, with regard to the reimbursement of excise duties and additional taxes, that:

- only the supplier is obliged to pay excise duties and additional taxes, but the supplier can fully charge the excise duties paid to the final consumer (in Article 56 of the Law on Excise, it is also specified that the supplier companies «have the right to redress on final consumers»);

- The additional taxes on the energy consumption, as the excise duties, are due by the supplier, at the time of supplying the electricity to the final consumer. The right to a refund is entirely up to the supplier, who can exercise this right against the Tax Authority: a) in the event that the

tax has not been charged to the final consumer, within two years from the date of payment of the tax; b) in the event that the tax has been charged to the final consumer and that the latter has successfully took legal action of recovery of the undue payment, within ninety days from the date of effectiveness of the final judgment;

- In the case that additional taxes have been charged to **the final consumer** of an electricity supply, the consumer **can take an ordinary legal action of recovery for undue payments directly against the service provider** (supplier), with the further possibility, in exceptional cases, to ask for reimbursement directly towards the Tax Authority when the consumer proves that the legal action against the supplier is extremely burdensome (as it happens, e.g., in the case of the insolvency of the supplier). The consumer is in an advantageous position, since he can benefit from **an ordinary statute of limitation (10 years) for the legal civil action of recovery of the undue payments**, which is longer than the time limit provided to the supplier for the refund.

Consequently, it is possible to take legal action for the recovery of the amounts not yet time-barred unduly paid during 2010 and 2011.

Once the final consumer has successfully acted for the refund against the supplier, the latter can claim the refund against the Tax Authority within ninety days from the final judgement. Therefore, the action for refund is expressly granted to the supplier, who has transferred the tax to the consumer, as a result of the action the consumer has successfully brought against him.

Contacts for further information:



Rita Santaniello
Attorney-at-law
Partner
T +39 02 63 28 841
rita.santaniello@roedl.it



Massimo Riva
Attorney-at-law
Senior Associate
T +39 02 63 28 841
mjassimo.riva@roedl.it

Impressum

Editor:
Rödl & Partner
Largo G. Donegani 2
T +39 02 63 28 841
www.roedl.it
www.roedl.com

Follow us on:



[Privacy policy](#)

This memo represents an informational service and its contents are not binding and are intended for merely informational purposes. It does not represent either a legal, fiscal or business management consultancy, nor can it substitute a personalized customer consultation.

In drafting the memo and the information contained herein, Rödl & Partner has undertaken to use the utmost care; however, Rödl & Partner does not assume any responsibility for the accuracy, currency and completeness of said information. Moreover, said information does not refer to any precise circumstances, specific individuals or legal entities; therefore, in the event of specific cases, professional advice should always be requested. Rödl & Partner is not responsible for any decisions that the reader may take on the basis of this memo. Our associates remain at your disposal.

The entire content of this memo and the technical information published online are intellectual property of Rödl & Partner and are protected by copyright. Users may download, print or copy the contents of the memo only for personal use.

Any modification, reproduction, distribution or publication of the entire content or of any of its parts, whether online or offline, requires the prior written authorization of Rödl & Partner. This message is directed to the indicated recipient. If your address has been incorrectly entered among the recipients or if you no longer wish to receive this newsletter, please contact us by email and accept our apologies for any inconvenience.