VAT Fraud in Italy: A Functional Analysis of the Burden of Proof in EU and Domestic Law

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1. Introduction

VAT fraud does not merely represent a compliance issue: it exposes a structural tension at the very core of the common VAT system. The same mechanism that ensures the neutrality of the tax, namely the right to deduct input VAT, is also the entry point for fraudulent schemes, particularly in complex, cross-border transactions.
This tension places the allocation of the burden of proof at the centre of the system. Far from being a purely procedural matter, it operates as a decisive instrument for balancing two competing imperatives: preserving the neutrality of VAT and safeguarding public revenue against fraud. Any misallocation risks undermining one of these objectives, either by enabling abusive practices or by eroding fundamental taxpayer rights.
Within the European Union, this balance has not been codified. Instead, it has been progressively constructed through the case law of the Court of Justice of the European Union (CJEU), which has developed a functional and fact-sensitive approach to the burden of proof in fraud cases.
Italy provides a particularly revealing case study. Its legal system has moved away from formalistic approaches towards a model increasingly aligned with CJEU principles, while still reflecting the constraints and dynamics of domestic procedural law. The Italian experience thus offers a concrete testing ground for assessing whether and to what extent the delicate equilibrium between neutrality and anti-fraud enforcement can be effectively maintained in practice.

2. The EU Framework: VAT Fraud and the Functional Allocation of the Burden of Proof

The VAT Directive (2006/112) does not establish a uniform rule governing the burden of proof in cases involving fraud. Instead, the applicable framework has been developed through the jurisprudence of the CJEU, which has adopted a functional approach grounded in the structure and objectives of the tax.
This approach finds its most systematic expression in the Kittel doctrine (Joined Cases C-439/04 and C-440/04, *Kittel and Recolta Recycling*), according to which the right to deduct must be denied where it is established, on the basis of objective factors, that the taxable person knew or should have known that the transaction was connected with VAT fraud.
The evidentiary model that emerges from this line of case law is progressive and structured. The tax authorities bear the initial burden of demonstrating:

- the existence of a fraudulent scheme;
- the connection between the transaction at issue and that scheme; and
- the taxable person’s knowledge, whether actual or constructive.

Only once this threshold has been met does the analysis shift to the conduct of the taxable person. Even at this stage, however, the burden is not reversed in a strict sense: the taxable person is not required to prove the absence

of fraud, but rather to demonstrate that they have taken all measures which could reasonably be required to ensure that their transactions were not connected with fraud (*see* C-285/11, *Bonik*; C-512/21, *Aquila Part Prod Com*).

A fundamental corollary of this framework is the prohibition of general presumptions of fraud, consistently reaffirmed by the CJEU (*see*, inter alia, C-131/13, *Italmoda*; C-537/22, *Global Ink Trade*). National authorities must rely on specific, precise and consistent evidence; they may not shift the burden of proof onto the taxpayer through abstract or generalized assumptions.

This jurisprudence reflects a fundamental principle of EU VAT law: measures aimed at preventing fraud must comply with the principles of proportionality and neutrality, as enshrined in article 273 of the VAT Directive (2006/112). Such measures must not render the exercise of the right to deduct impossible or excessively difficult.

3. The Italian Approach to VAT Fraud: Convergence and Systemic Adaptation

Italian jurisprudence has progressively internalized the principles developed by the CJEU, leading to a significant convergence between EU and domestic approaches to the burden of proof in VAT fraud cases.

This convergence is particularly evident in the recent shift of the Supreme Court away from formalistic approaches towards a more functional interpretation of the burden of proof.

Earlier case law often placed significant emphasis on formal irregularities and on the taxpayer's proximity to the relevant evidence, sometimes resulting in an evidentiary imbalance operating in favour of the tax authorities. In several cases, anomalies within the supply chain were considered sufficient to trigger heightened evidentiary expectations on the taxpayer, even in the absence of specific proof of knowledge or participation in fraud. Recent jurisprudence, by contrast, has progressively aligned with the CJEU's requirement that tax authorities establish objective and specific elements demonstrating the taxpayer's actual or constructive awareness of the fraudulent scheme.

The Italian Supreme Court (*Corte di cassazione*) has consistently adopted a two-step evidentiary structure, closely mirroring the Kittel framework. First, the tax authorities must provide objective elements demonstrating the existence of fraud and the taxpayer's knowledge thereto. These elements must be concrete and specific and cannot be inferred solely from irregularities affecting other operators in the supply chain.

In particular, the Court has clarified that the burden rests initially with the tax authorities to demonstrate, through objective and specific elements, that the taxable person knew or should have known that the transaction was connected to fraud (*see*, inter alia, *Corte di Cassazione*, no. 24818/2025).

Only after this evidentiary threshold has been satisfied does the analysis shift to the taxpayer's conduct. Even in this second phase, however, the taxpayer is not required to prove a negative, namely the absence of fraud, but rather to demonstrate that they have exercised the level of diligence reasonably expected in the circumstances.

Recent case law has further clarified the limits of administrative claims. The mere existence of anomalies in the supplier's conduct, such as lack of economic structure or accounting inconsistencies, does not suffice to deny the right to deduct VAT. The tax authorities must establish a specific link between such anomalies and the taxpayer. Moreover, formal infringements, even when significant, do not automatically imply participation in fraud.

In this respect, the Supreme Court has also emphasized that even serious formal violations do not automatically justify the denial of the right to deduct in the absence of proof of participation in a fraudulent scheme (*see Corte di Cassazione*, no. 31406/2025).

This jurisprudential evolution confirms the transition towards a functional and evidence-based model, in which the allocation of the burden of proof is determined by the nature of the legal issue and the underlying interests at stake, rather than by formal procedural positions.

4. VAT Fraud and the Limits of National Autonomy: Proportionality as a Structural Constraint

The enforcement of VAT fraud rules must be assessed within the broader framework of the limits imposed on national procedural autonomy by EU law.

Article 273 of the VAT Directive (2006/112) authorizes Member States to introduce additional obligations aimed at

ensuring the correct collection of VAT and preventing evasion. However, this competence is subject to a fundamental limitation: such measures must not impose obligations that go beyond what is necessary to achieve those objectives.
The CJEU has consistently interpreted this provision as embodying the principle of proportionality. In the context of VAT fraud, this implies that the evidentiary burden imposed on taxpayers must remain reasonable and proportionate, that national authorities may not rely on presumptions that effectively reverse the burden of proof, and that obligations derived from other regulatory frameworks cannot be automatically transposed into the VAT context (*see* C-329/18, *Altic*).
The Italian experience illustrates the practical application of these constraints. Domestic courts have increasingly scrutinized administrative practices to ensure that anti-fraud measures do not undermine the neutrality of VAT or result in a de facto denial of fundamental taxpayer rights.
In this respect, proportionality operates not merely as a corrective principle, but as a structural limit shaping the entire evidentiary framework in VAT fraud cases.

5. Italy as a Case Study in VAT Fraud Enforcement

The Italian system offers a particularly valuable perspective on the practical implementation of VAT fraud rules within a harmonized legal framework.
On the one hand, the increasing sophistication of fraudulent schemes, especially in cross-border contexts, requires robust investigative tools and a rigorous evidentiary approach. On the other hand, the need to preserve the neutrality of VAT imposes strict limits on the allocation of the burden of proof.
The experience of Italian case law demonstrates that these objectives are not mutually exclusive. Through progressive alignment with CJEU principles, the Italian system has developed a model characterized by a clear distinction between substantive and formal requirements, a structured and progressive allocation of the burden of proof, and a strong emphasis on proportionality and the protection of taxpayers' rights.
In this sense, Italy can be regarded not only as a jurisdiction adapting to EU law, but also as a laboratory for the functional application of VAT principles in the field of fraud.

6. Conclusion

VAT fraud represents a systemic risk for the integrity of the European tax system, requiring both effective enforcement mechanisms and a coherent legal framework.
The functional approach to the burden of proof developed by the CJEU provides such a framework. By structuring the evidentiary model in a progressive manner and limiting the use of presumptions, it ensures that anti-fraud measures remain compatible with the fundamental principles of VAT law.
The Italian experience confirms the practical viability of this approach. Through the progressive convergence of domestic jurisprudence with CJEU principles, as reflected in recent Supreme Court case law, a balanced system has emerged, one capable of combating fraud effectively while preserving the neutrality of the tax and the rights of taxable persons.
In this evolving landscape, the allocation of the burden of proof will remain a critical fault line, determining whether the VAT system can reconcile effective fraud prevention with the preservation of its foundational principles.

IBFD references:

- EU tax law developments are reported on the daily IBFD Tax News Service page.
- For an overview of the EU framework on VAT fraud and the development of the CJEU case law, *see*:
  - BE: ECJ, 6 July 2006, Case C-439/04, *Axel Kittel v. État belge and État belge v. Recolta Recycling SPRL*, Case Law IBFD.

- BG: ECJ, 6 Dec. 2012, Case C-285/11, *Bonik EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto', Varna*, Case Law IBFD.
- NL: ECJ, 18 Dec. 2014, Case C-131/13, *Staatssecretaris van Financiën v. Schoenimport „Italmoda" Mariano Previti vof and Turbu.com BV, Turbu.com Mobile Phone's BV v. Staatssecretaris van Financiën*, Case Law IBFD.
- LV: ECJ, 3 Oct. 2019, Case C-329/18, *Valsts ieņēmumu dienests v. SIA Altic*, Case Law IBFD.
- HU: ECJ, 1 Dec. 2022, Case C-512/21, *Aquila Part Prod Com S.A. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, Case Law IBFD.
- HU: ECJ, 11 Jan. 2024, Case C-537/22, *Global Ink Trade Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, Case Law IBFD.