

# **DAIKIN APPLIED EUROPE S.p.A.**

## **Summary Document** concerning the

### **Organisation and Management Model** **Legislative Decree No. 231/2001**

**"Organisational Model".**

*Special Part M*

*Tax Crimes*

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## 1. TAX CRIMES

### 1.1 Introduction

The offences related to this Special Section are referred to in Article 25-*quinquiesdecies* of Legislative Decree no. 231/2001, introduced by Legislative Decree no. 26 October 2019, converted with amendments into Law no. 157 of 19 December 2019, with reference to the following tax crimes: i) fraudulent declaration through the use of invoices or other documents for non-existent transactions (Article 2, paragraphs 1 and 2-bis, Legislative Decree no. 74/2000); ii) fraudulent declaration through other devices (Article 3, Legislative Decree no. 74/2000); iii) issuance of invoices or other documents for non-existent transactions (Article 8, Legislative Decree no. 74/2000); iv) fraudulent declaration by means of other devices (Article 3, Legislative Decree 74/2000); iii) issuance of invoices or other documents for non-existent transactions (Article 8, paragraphs 1 and 2-bis, Legislative Decree 74/2000); iv) concealment or destruction of accounting documents (Article 10, Legislative Decree 74/2000); v) fraudulent evasion of taxes (Article 11, Legislative Decree 74/2000).

With a second intervention, in July 2020, the tax crimes relevant for the purposes of Legislative Decree 231/2001 were further expanded, when implementing the so-called PIF Directive (EU Directive 2017/1371) on "combating fraud" affecting the financial interests of the EU by means of criminal law". Specifically, Legislative Decree no. 75 of 14 July 2020, implementing the provisions of the European legislation and the transposition law (European delegation law no. 117 of 4 October 2019), expanded Article 25-*quinquiesdecies* of Legislative Decree. 231/2001 and the related list of predicate offences, to the following tax offences: i) false declaration (Article 4, Legislative Decree no. 74/2000); ii) omitted declaration (Article 5, Legislative Decree no. 74/2000); iii) undue compensation (Article 10-*quater*, Legislative Decree no. 74/2000). In this case, the new offences have been introduced by limiting the liability of the entity to cases where they are carried out within the framework of cross-border fraudulent schemes, in order to evade VAT for an amount exceeding €10 million ("Maxi-VAT frauds").

The full text of Article 25-*quinquiesdecies*, entitled "**Tax Crimes**", is reproduced below:

*"In relation to the commission of the offences provided for in Legislative Decree no. 74 of 10 March 2000, the following pecuniary sanctions shall apply to the entity:*

- a) for the offence of fraudulent misrepresentation by means of invoices or other documents for non-existent transactions provided for in Article 2(1), a pecuniary sanction up to five hundred shares;*
- b) for the offence of fraudulent misrepresentation by means of invoices or other documents for non-existent transactions, provided for in Article 2, paragraph 2-bis, the pecuniary sanction up to four hundred shares;*
- (c) for the offence of fraudulent misrepresentation by means of other devices, provided for in Article 3, a pecuniary sanction of up to five hundred shares;*
- d) for the offence of issuing invoices or other documents for non-existent transactions, provided for in Article 8(1), the pecuniary sanction up to five hundred shares;*
- e) for the offence of issuing invoices or other documents for non-existent transactions, provided for in Article 8, paragraph 2-bis, the pecuniary sanction up to four hundred shares;*
- f) for the offence of concealment or destruction of accounting documents, provided for in Article 10, the pecuniary sanction up to four hundred shares;*

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<sup>1</sup> For the purposes of the PIF Directive, fraud affecting the financial interests of the Union shall mean, inter alia, any act or omission committed in cross-border fraud schemes whereby (i) the use or presentation of false, incorrect or incomplete VAT returns or documents, or the omission to report VAT information in breach of a specific obligation, either of which results in a loss of EU financial resources, or (ii) the submission of an accurate VAT return to fraudulently conceal non-payment or the unlawful establishment of VAT refund entitlements (Article 3(2)(d) of the PIF Directive).

g) for the offence of fraudulent evasion of taxes, provided for in Article 11, a pecuniary sanction of up to four hundred shares.

1-bis. In relation to the commission of the offences provided for by Legislative Decree no. 74 of 10 March 2000, if committed within the framework of cross-border fraudulent schemes and in order to evade value added tax for a total amount of not less than ten million Euros, the following monetary sanctions shall apply to the entity:

a) for the offence of false declaration provided for in Article 4, a pecuniary sanction of up to three hundred shares;

b) for the offence of failure to make a declaration provided for in Article 5, a pecuniary sanction of up to four hundred shares;

c) for the offence of undue compensation provided for in Article 10-quater, a pecuniary sanction of up to four hundred shares.

2. If, following the commission of the offences indicated in paragraphs 1 and 1-bis, the entity has obtained a significant profit, the pecuniary sanction is increased by a third.

3. In the cases provided for in paragraphs 1, 1-bis and 2, the disqualification sanctions referred to in Article 9, paragraph 2, letters c), d) and e) shall apply. "

The predicate offences referred to in Article 25-quinquiesdecies of Legislative Decree 231/01 are described below.

## 1.2 The types of offences

### 1.2.1 The Tax Crimes referred to in Article 25-quinquiesdecies, paragraph 1 of Legislative Decree 231/01

#### **The offence of fraudulent declaration through the use of invoices or other documents for non-existent transactions (Article 2(1) and (2-bis) of Legislative Decree No. 74/2000)**

The conduct of a person who, in order to evade taxes on income or on value added, uses invoices or other documents for non-existent transactions and indicates fictitious passive elements in one of the declarations relating to such taxes, constitutes an offence. The offence is deemed to have been committed by availing oneself of invoices or other documents for non-existent transactions when such invoices or documents are recorded in the compulsory accounting records or are held for the purpose of providing evidence to the tax authorities.

#### **The offence of fraudulent declaration by means of other devices (Article 3, Legislative Decree No 74/2000)**

The conduct of a person who, in order to evade taxes on income or on value added, by carrying out objectively or subjectively simulated transactions or by making use of false documents or other fraudulent means capable of hindering the assessment and misleading the tax authorities, indicates in one of the declarations relating to such taxes assets for an amount lower than the actual amount or fictitious liabilities or fictitious credits and deductions, is considered to be a criminal offence. The offence shall be deemed to have been committed with the aid of false documents when such documents are recorded in the compulsory accounting records or are held for the purpose of providing evidence to the tax authorities. The mere violation of the obligations to invoice and record assets in the accounting records or the mere indication in the invoices or in the records of assets that are lower than they really are do not constitute fraudulent means.

#### **Issuance of invoices or other documents for non-existent transactions (Article 8(1) and (2-bis) of Legislative Decree No 74/2000)**

The criminally relevant conduct consists in issuing invoices or other documents for non-existent transactions in order to allow third parties to evade income tax or value added tax.

**Concealment or destruction of accounting documents (Article 10, Legislative Decree No 74/2000)**

The criminally relevant conduct consists in the concealment or destruction, in whole or in part, of accounting records or documents whose retention is mandatory, so as not to allow the reconstruction of income or turnover, in order to evade income tax or value added tax, or to allow third parties to evade them.

**Fraudulent non-payment of taxes (Article 11, Legislative Decree No 74/2000)**

The conduct of a person who (i) in order to evade payment of income tax or value added tax or of interest or administrative sanctions relating to such taxes totalling more than €50.(i) in order to avoid paying income or value added taxes or interest or administrative sanctions relating to such taxes for a total amount in excess of €50,000.00, falsely sells or carries out other fraudulent acts with regard to his own assets or the assets of others which render the compulsory collection procedure wholly or partly ineffective; (ii) in order to obtain for himself or others partial payment of taxes and related accessories, indicates in the documentation submitted for the purposes of the tax settlement procedure assets for an amount lower than the actual amount or fictitious liabilities for a total amount in excess of €50,000.00.

**1.2.2 The Tax Crimes referred to in Article 25-quinquiesdecies, paragraph 1-bis of Legislative Decree 231/01****Untrue declaration (Article 4, Legislative Decree no. 74/2000)**

The conduct of a person who, in order to evade value added tax for a total amount of not less than EUR 10 million, in the context of cross-border fraudulent schemes, indicates in the VAT declaration assets of an amount lower than the actual amount or non-existent taxable elements is a criminal offence.

**Failure to make a declaration (Article 5, Legislative Decree no. 74/2000)**

The conduct of a person who, in the context of cross-border fraudulent schemes, in order to evade value added tax for a total amount of not less than EUR 10 million, omits to submit the annual VAT return, being obliged to do so, is a criminal offence. A declaration submitted within ninety days of the expiry of the time limit or not signed or not drawn up on a form conforming to the prescribed model shall not be regarded as omitted.

**Undue compensation (Article 10-quater, Legislative Decree 74/2000)**

The conduct of a person who, in the context of cross-border fraudulent schemes, fails to pay the amounts due by using undue or non-existent credits as compensation, in order to evade value added tax for a total amount of not less than EUR 10 million, is a criminal offence.

### 1.3 The offences that are theoretically applicable to Daikin Applied Europe

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#### 1.4 Sensitive activities

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### 1.5 The liabilities of the Company with regard to tax matters

Daikin Applied Europe undertakes to base its administrative and accounting activities on the utmost transparency and correctness, in compliance with the applicable regulations and any other relevant provisions. To this end, the commitments undertaken by the Company are as follows:

- orientate employees and those who work on behalf of the Company towards a culture of responsibility and attention to the issues of proper management of corporate activities, i.e. pursue the objective of developing within the corporate context the culture of *compliance*, making all corporate bodies and staff aware of the need to comply with the key principles of the law and regulations in the sector when carrying out corporate activities;
- ensure that all activities are carried out in full compliance with legal requirements and applicable tax regulations and with all company rules aimed at preventing the possible commission of the offences referred to in Legislative Decree 231/01, as well as in the awareness, on the part of the staff involved in the sensitive processes identified above, of the potential risks of offences referred to in the same Legislative Decree 231/01;
- organise meetings and/or *training* courses for company staff on the potential risks of offences under Legislative Decree 231/01;
- provide for a disciplinary system capable of penalising failure to comply with the measures indicated in the Organisational Model in order to prevent the offences referred to in Legislative Decree 231/01;
- provide for appropriate information flows from the staff to the Supervisory Board (hereinafter, "SB") of the Company concerning any criticality capable of determining the risk of commission of the offences referred to in Legislative Decree 231/01.

Daikin Applied Europe also ensures:

- the existence of provisions and/or standardised company procedures suitable for providing principles of conduct, operating methods for carrying out sensitive activities, as well as suitable methods for filing the relevant documentation;
- the definition of roles and responsibilities in relation to the management of accounting and tax activities, including the monitoring of legislation (any new and amended legislation, case law or practice) in the field of taxation and related control activities;
- adequate segregation of duties, as far as possible, with separation of activities between those who authorise, those who execute and those who control, and with identification, as far as possible, of a person responsible for each sensitive activity;
- formalisation in a specific contract with external consultants;
- appropriate methods of archiving the relevant documents, in order to ensure that the data stored therein cannot be modified (except with appropriate evidence), and that only persons authorised under internal rules can access documents already archived;
- periodic checks of tax activities (hierarchical and external person/consultant checks);
- a formalised system of powers of attorney and proxies, where necessary, complying with the following requirements i) consistency of the delegate's qualifications and professional skills with the organisational and management responsibilities assigned, with provision, where required, for the indication of the approval thresholds for the relevant expenses; ii) express acceptance by the delegate and consequent assumption of the relevant obligations; iii) clear definition of the same and of the respective contents and operating areas; iv) knowability within the Company and publicity towards external stakeholders; v) definition of the corporate roles with spending powers, with specification of the limits and nature of the expenses themselves;
- that each operation carried out by the Company is not only correctly recorded, but also authorised, verifiable, legitimate and consistent with the reference documentation.

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### 1.6 Principles and rules of behaviour for Recipients

The Recipients, identified as specified in the General Section (point 3.5), must:

- refrain from engaging in conduct capable of committing the offences referred to in Legislative Decree 231/01 or conduct which, although it does not constitute the offences referred to in Legislative Decree 231/01, is potentially capable of committing them;
- act in compliance with the powers of representation and signature, within the framework of the delegations/proxies conferred;
- behave correctly and transparently, in compliance with the law and internal company procedures, in all activities.

The following prohibitions, as general principles of conduct, are addressed to all the Recipients of this Model, involved in various ways in sensitive activities:

- representing in accounts, or transmitting for processing and representation in financial statements, reports and prospectuses or other corporate communications, false, incomplete or, in any case, untrue data on the economic and financial situation of the Company;
- record in the accounts transactions at incorrect values with respect to the reference documentation, or against transactions that do not exist in whole or in part or without adequate supporting documentation;
- issue invoices or any other equivalent document for transactions that are wholly or partly non-existent or for values that are not congruent;
- fail to report any record of assets or liabilities that is unlawful, incorrect, false or that corresponds to suspicious transactions or a conflict of interest;
- reporting fictitious liabilities (e.g. relating to non-existent transactions or transactions that never actually took place) or assets that are lower than the actual ones (e.g. relating to simulated transactions in which a sale is invoiced for a lower amount than the actual one) in order to evade taxes;
- submitting false tax declarations, i.e. containing under-reported assets or over-reported, non-deductible or non-existent liabilities, in order to evade VAT;
- delaying or failing to file a compulsory tax return in order to evade tax;
- making undue offsets between VAT due and non-existent (artificially constructed) or undue tax credits (not usable or no longer usable for offsetting) in order to evade VAT;
- carrying out activities and/or operations aimed at evading income tax or value added tax, or allowing third parties to carry out such evasion;
- altering, concealing or destroying documents and financial and accounting information available in paper and/or electronic form, as well as accounting records or documents whose retention is mandatory;
- make purchases which do not correspond to a specific and justifiable need of the Company or make payments to suppliers without adequate justification;

- awarding fees and reimbursement of expenses to suppliers that are not justified in relation to the type of task to be performed and the market prices.

### 1.7 Specific Procedures and Operating Instructions

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### 1.8 Checks and information flow to the Supervisory Board

The Supervisory Board carries out periodic checks on the risk activities indicated above, in order to verify their consistency with the provisions contained in the Organisational Model and, in particular, with the procedures which the Company has defined to govern the performance of sensitive activities.

All company departments, whether senior management and/or subordinate to the management of others, as well as the members of corporate bodies, are obliged to promptly inform the Supervisory Board of any requests made by the latter or of the occurrence of events or circumstances such as to suggest the commission of a possible offence under Legislative Decree 231/2001.

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