

## Tax | Update

### June 2023

#### Summary

<b>I. MINISTERIAL PRACTICE .....</b>	<b>4</b>
<b>CIRCULARS .....</b>	<b>4</b>
✓ Synthetic indexes of fiscal reliability - fiscal year 2022 (Circular no. 12/E of 1 June 2023) .....	4
✓ Changes to the Superbonus rules of art. 119 of Law Decree no. 34 of 19 May 2020, Law Decree no. 176 of 18 November 2022, Law no. 197 of 29 December 2022 and Law Decree no. 11 of 16 February 2023 (Circular no. 13/E of 13 June 2023) .....	4
✓ Art. 1, par. 55 to 57, of Law no. 197 of 29 December 2022 (Budget Law 2023) - Introduction of the 'incremental flat tax' regime (Circular no. 18/E of 18 June 2023) .....	4
<b>PRESS RELEASES.....</b>	<b>5</b>
✓ Press Release of the Ministry of Economy and Finance no. 98 of 14 June 2023 .....	5
<b>RESPONSES TO REQUESTS FOR ADVANCE TAX RULINGS .....</b>	<b>5</b>
✓ Taxable person for VAT purposes - Intervention of Italian permanent establishment (Response to the request for advance tax ruling no. 336 of 1 June 2023) .....	5
✓ Patent Box - Exercise of the option for the New Patent Box in relation to the same intangible assets already subject to the option for the Old Patent Box in the absence of the <i>ruling</i> and the exercise of the OD option (Response to the request for advance tax ruling no. 342 of 5 June 2023) .....	6
✓ Substitute tax referred to in art. 110, par. 3, of Law Decree no. 104 of 14 August 2020 - assessment in excess of the amount due - recovery in the event of payment by instalments (Response to the request for advance tax ruling no. 344 of 6 June 2023) .....	6
✓ Company with negative net worth - VAT refund - obligation to provide a guarantee – Art. 38-bis of Presidential Decree no. 633/1972 (Response to the request for advance tax ruling no. 347 of 14 June 2023) .....	6
✓ Superbonus - invoice discount - error in the invoice and in the communication to the Italian Tax Authorities - penalties applicable to credit set-off – Art. 13 of Legislative Decree no. 471/1997 (Response to the request for advance tax ruling no. 348 of 14 June 2023) .....	6



✓	Reassessment of the stamp duty paid virtually, pursuant to art. 15 and 15-bis of Presidential Decree no. 642 of 26 October 1972, in the event of submission of a substitute declaration 'in favour' (Response to the request for advance tax ruling no. 350 of 19 June 2023).....	7
✓	Non-energy tax credit. Art. 6 of Law Decree no. 115 of 9 August 2022. Chargeback of costs incurred for energy (Response to the request for advance tax ruling no. 358 of 23 June 2023).....	7
✓	Variation notes pursuant to art. 26 of Presidential Decree no. 633/1972 (Response to the request for advance tax ruling no. 359 of 23 June 2023).....	8
	<b>ORDERS.....</b>	<b>8</b>
✓	Approval of the new communication model for the use of tax credits for investments in the “Mezzogiorno, SEZs and FTZs” (Italian Tax Authorities Order no. 188347 of 1 June 2023).....	8
✓	Notifications for the promotion of spontaneous compliance with regard to persons for whom it appears that they have failed to file a VAT return for the 2022 fiscal period (Italian Tax Authorities Order no. 210441 of 13 June 2023).....	8
✓	Definition of the modalities for the implementation of the tax credit for the adjustment, pursuant to art. 18, par. 4-bis of Law Decree no. 36 of 30 April 2022, of the instruments used for the telematic storage and transmission to the Italian Tax Authorities of the daily consideration data (Italian Tax Authorities Order no. 231943 of 23 June 2023).....	9
	<b>RESOLUTIONS.....</b>	<b>9</b>
✓	Tax credits accrued by so-called “energy-intensive”/“gas-intensive” and “non-energy-intensive”/“non-gas-intensive” companies - applicability of the so-called 'remissione <i>in bonis</i> ' (Resolution no. 27/E of 19 June 2023).....	9
	<b>LAW PRINCIPLE.....</b>	<b>9</b>
✓	Option for access to the <i>branch exemption</i> regime - remission <i>in bonis</i> – Art. 168-ter of Presidential Decree no. 917 of 22 December 1986 (Law Principle no. 10 of 13 June 2023).....	9
✓	Transactions between “Italian” permanent establishments of companies belonging to a foreign VAT group - VAT relevance – Art. 7 and 70-quinquies of Presidential Decree no. 633 of 26 October 1972 (Law Principle no. 11 of 13 June 2023) 10	10
	<b>II. UPDATE ON REGULATION.....</b>	<b>10</b>
✓	Law Decree 114 June 2023 no. 69 "Urgent provisions for the implementation of obligations arising from acts of the European Union and from infringement and pre-infringement proceedings pending against the Italian State".....	10
✓	Ministerial Decree of 26 June 2023 Ministry of Economy and Finance “Provisions for the implementation and coordination of the rules contained in art. 1, par. 87 to 95, of Law no. 197 of 29 December 2022, concerning substitute tax on foreign profits and profit reserves”.....	10
✓	Law Decree no. 79 “Urgent provisions in support of households and businesses for the purchase of electricity and natural gas, as well as on legislative deadlines” (Law Decree “Bollette-bis”).....	11
	<b>III. CASE-LAW UPDATE.....</b>	<b>11</b>



- ✓ Mother-daughter dividends (Supreme Court, 8 June 2023, no. 16173) .11
- ✓ Confiscation today bargainable but not if compulsory (Supreme Court, Criminal Section III, 13 June 2023, no. 25317) .....12
- ✓ Entrusting accounting to an accountant - Subjective and objective element (Criminal Supreme Court, 14 June 2023, no. 25585).....12
- ✓ Relationship between losses, dissolution of the company and recapitalization resolution - Time limits within which to act (Supreme Court, 15 June 2023, no. 17139).....12
- ✓ Partial assignment of VAT credit (Supreme Court, 19 June 2023, no. 17466) 13
- ✓ Particular tenuousness of the fact - Conduct subsequent to the offence - Payment of tax debt (Criminal Supreme Court, 28 June 2023, no. 28031) .....13
  
- IV. EUROPEAN UNION .....13**
  - CASE LAW ..... 13**
  - ✓ Surplus quantity of goods discovered after the granting of release - Lodging of a new customs declaration - Necessity (Court of Justice of the EU, Sect. IX, 8 June 2023, C-640/21 “SC Zes Zollner Electronic SRL”) .....13
  - ✓ Concept of fixed establishment – Suitable structure in terms of hums and technical resources - Territoriality of services (Court of Justice of the EU, Sect. X, 29 June 2023, C-232/22 “Cabot Plastics Belgium SA”) .....14



## I. MINISTERIAL PRACTICE

### CIRCULARS

- ✓ **Synthetic indexes of fiscal reliability - fiscal year 2022** ([Circular no. 12/E of 1 June 2023](#))

With Circular no. 12/E of 1 June 2023, the Italian Tax Authorities provided clarifications on the new synthetic tax reliability indices (ISA) to be applied for the fiscal year 2022.

The Circular provides a summary of the regulations introduced over the past year that have affected the measure at stake.

In particular, the most relevant innovations were:

- corrections to the reliability and anomaly indicators of individual ISA;
- the cause of exclusion for subjects who have opened a VAT number since 1 January 2021.

- ✓ **Changes to the Superbonus rules of art. 119 of Law Decree no. 34 of 19 May 2020, Law Decree no. 176 of 18 November 2022, Law no. 197 of 29 December 2022 and Law Decree no. 11 of 16 February 2023** ([Circular no. 13/E of 13 June 2023](#))

With Circular no. 13/E of 13 June 2023, the Italian Tax Authorities provided clarifications on the new superbonus provisions introduced by Law Decree no. 176/2022, by the Budget Law 2023 and by Law Decree no. 11/2023.

In particular, the Italian Tax Authorities provided clarifications in relation to variants to the CILA superbonus.

The Circular mentions the works relating to condominium buildings and buildings wholly owned by natural persons, consisting of a number of main building units of no less than two and no more than four, as well as to the real estate units of natural persons within the same condominium or building and Third Sector entities:

- in relation to the expenses incurred in 2023, the works that can benefit from the superbonus to the extent of 110% from those that can only benefit to the extent of 90% (art. 1, par. 894 of Law no. 197/2022);
- with reference to the way in which the benefit can be used, both superbonus and other building bonuses, the works that can continue to benefit from bonuses also in the optional form of a rebate on the consideration or transfer of the credit from those that can continue to benefit from bonuses only in the natural form of a deduction in the tax return.

- ✓ **Art. 1, par. 55 to 57, of Law no. 197 of 29 December 2022 (Budget Law 2023) - Introduction of the 'incremental flat tax' regime** ([Circular no. 18/E of 18 June 2023](#))

The Italian Tax Authorities have confirmed, following the previously published draft, the subjects admitted to the facilitation, i.e. natural persons exercising a business activity, including family and spouse businesses not managed in corporate form, or an art or profession in individual form. In addition, compared to the draft circular, individual agricultural entrepreneurs have also been admitted.

On the other hand, natural persons applying the flat-rate regime in 2023 are excluded from the measure, except in the event of an immediate exit from the regime due to exceeding the EUR 100,000 limit during the year.

The Italian Tax Authorities also confirmed the method of calculating the flat tax, which is applied on the difference between the business and self-employment income determined in 2023 and the highest amount of income declared in the years 2020 to 2022.

The tax base determined in this way can not exceed EUR 40,000.

In addition, the incremental flat tax does not apply to taxpayers who have started their activity since 2023, as it is not possible to determine the incremental income for these taxpayers due to the lack of data for the previous three years. The relief, on the other hand, may be applied by taxpayers who have carried out their activity for at least one entire year among those of the three-year reference period.

## PRESS RELEASES

- ✓ [Press Release of the Ministry of Economy and Finance no. 98 of 14 June 2023](#)

On 14 June 2023, the Ministry of Economy and Finance announced that a subsequent law provision will extend, for professionals and taxpayers affected by the application of the synthetic tax reliability indices (ISA), the deadlines for the payment of amounts resulting from income, IRAP and VAT declarations, due on 30 June 2023.

Specifically, the release states that these deadlines are extended to 20 July 2023, without any surcharge, and to 31 July 2023, applying a surcharge of 0.40 per cent.

Also, the Ministry specifies that this extension also applies to taxpayers with causes of exclusion from the ISA to persons applying the forfeit regime and the regime of the minimums, and to those who participate in companies, associations and enterprises within the meaning of art. 5, 115 and 116 of the TUIR subject to the ISA.

## RESPONSES TO REQUESTS FOR ADVANCE TAX RULINGS

- ✓ **Taxable person for VAT purposes - Intervention of Italian permanent establishment ([Response to the request for advance tax ruling no. 336 of 1 June 2023](#))**

The Italian Tax Authorities have concluded for VAT purposes - also on the basis of the analysis of documents and information relevant for transfer pricing purposes - that in the case under the request for advance tax ruling the activities of customer relationship management, the search for potential customers resident in Italy and the drafting of contractual documentation, carried out by a permanent establishment, enable the head office to provide its services.

Moreover, through an adequate structure of technical and human resources, the branch is capable of participating actively in the drafting of contracts signed by the head office, the role of the permanent establishment not being a non-qualifying one, i.e. merely of an administrative or support nature.

Indeed, in the event that the permanent establishment, through the performance of preparatory activities, enables the head office to perform its services, those activities

are “inherent and preliminary” to those subsequently performed by the head office, operating with a certain degree of autonomy and playing an active role in the transactions.

- ✓ **Patent Box - Exercise of the option for the New Patent Box in relation to the same intangible assets already subject to the option for the Old Patent Box in the absence of the *ruling* and the exercise of the OD option ([Response to the request for advance tax ruling no. 342 of 5 June 2023](#))**

The Italian Tax Authorities returned to the matter of the possibility for taxpayers to transit to the new Patent Box, pursuant to art. 6 of Law Decree 146/2021, with reference to intangible assets already subject to the option of the previous Patent Box, pursuant to art. 1 par. 37-45 of Law 190/2014, also referring to point 12.4 of Italian Tax Authorities Order no. 48243/2022 of 15 February 2022.

The Italian Tax Authorities specify that this possibility is precluded to those who:

- have already applied for renewal and signed an advance agreement with the Italian Tax Authorities;
- have already applied the self-assessment scheme for taxable income pursuant to art. 4 of Law Decree no. 34/2019.

- ✓ **Substitute tax referred to in art. 110, par. 3, of Law Decree no. 104 of 14 August 2020 - assessment in excess of the amount due - recovery in the event of payment by instalments ([Response to the request for advance tax ruling no. 344 of 6 June 2023](#))**

The Italian Tax Authorities have affirmed, in the hypothesis of releasing tax-suspension reserves in connection with the realignment of the civil and tax values pursuant to art. 110 of Law Decree no. 104/2020, the possibility of proceeding through the submission of a supplementary declaration, in the event of an erroneous assessment of the substitute tax.

The Italian Tax Authorities also point out that the submission of the supplementary declaration legitimizes the reduction of the remaining instalments to the extent of the excess already paid.

- ✓ **Company with negative net worth - VAT refund - obligation to provide a guarantee – Art. 38-bis of Presidential Decree no. 633/1972 ([Response to the request for advance tax ruling no. 347 of 14 June 2023](#))**

The Italian Tax Authorities have clarified that, in the event of a negative net worth, a company cannot obtain a VAT refund for an amount exceeding EUR 30,000 without providing the asset guarantee pursuant to art. 38-bis par. 3 of Presidential Decree no. 633/1972.

The Italian Tax Authorities have noted that a negative net worth cannot guarantee the VAT credit claimed for reimbursement.

The Italian Tax Authorities point out that this interpretation is consistent with the hypotheses in which the guarantee of the art. 38-bis, par. 4, of Presidential Decree no. 633/1972 is expressly required in any event, since the applicant's assets are considered unstable or attackable.

- ✓ **Superbonus - invoice discount - error in the invoice and in the communication to the Italian Tax Authorities - penalties applicable to credit**

**set-off – Art. 13 of Legislative Decree no. 471/1997 ([Response to the request for advance tax ruling no. 348 of 14 June 2023](#))**

The Italian Tax Authorities have clarified that the cancellation of an “invoice discount” communication tainted by a substantive error, in this case the incorrect indication of the beneficiary's tax code, will be possible even if the credit subject to the tainted communication has been accepted and used in compensation by the supplier or assignee.

In addition, the Italian Tax Authorities has noted that rectifying the transaction, by means of reversal, replacing the original invoices and sending the communication, regenerates the credit.

In such a case, the penalties that apply on the use of the credit in compensation before regeneration are those provided for the case of use of "non-applicable" credit pursuant to art. 13 par. 4 of Legislative Decree no. 471/1997, with the possibility of proceeding with a “voluntary correction of tax return”, and not those provided for the case of use of "non-existent" credit pursuant to art. 13 par. 5 of Legislative Decree no. 471/1997.

- ✓ **Reassessment of the stamp duty paid virtually, pursuant to art. 15 and 15-bis of Presidential Decree no. 642 of 26 October 1972, in the event of submission of a substitute declaration 'in favour' ([Response to the request for advance tax ruling no. 350 of 19 June 2023](#))**

The Italian Tax Authorities have examined the case in which a person authorized to pay stamp duty virtually, pursuant to art. 15 of Presidential Decree no. 642/1972, following the settlement of the tax by the Italian Tax Authorities and the payment thereof, realizes that it has made errors in the declaration of virtual stamp duty.

These errors have, in the present case, led to more tax than was actually due and, therefore, to a lower credit.

According to the Italian Tax Authorities specifications, in this context, the taxpayer is denied the possibility of the “voluntary correction”, as it is a matter of errors to the detriment of the taxpayer itself.

In addition, the “supplementary declaration in favor” is not applicable either, as the latter is intended to regulate cases peremptorily indicated by the reference rule (art. 2 par. 8 and art. 8 par. 6-bis of Presidential Decree no. 322/1998).

Lastly, the Italian Tax Authorities recognize that the taxpayer may file for reimbursement within three years of the payment but may not deduct the tax from future payments to be made.

- ✓ **Non-energy tax credit. Art. 6 of Law Decree no. 115 of 9 August 2022. Chargeback of costs incurred for energy ([Response to the request for advance tax ruling no. 358 of 23 June 2023](#))**

The Italian Tax Authorities have clarified that in the hypothesis of the recharging of costs incurred for the purchase of electricity and natural gas, the relevant tax credits may be enjoyed by the company to which such costs were rebilled, even if the latter is not the holder of the POD.

This is possible if the recharge is carried out in such a way as to result in a real economic burden on that company related to the increase in the cost of electricity.



In the present case, the recharge takes place in an analytical manner, isolating from the amount indicated by the electricity supplier the costs analytically referable to the consumption of the company in question.

- ✓ **Credit and debit notes pursuant to art. 26 of Presidential Decree no. 633/1972 ([Response to the request for advance tax ruling no. 359 of 23 June 2023](#))**

The Italian Tax Authorities specify that the supplier of goods and services who initially issued the credit note is subsequently required to issue a debit note only in the event that the customer pays in full or in part the amount subject to the previous credit note.

By means of this ruling, the Italian Tax Authorities, confirming what has already been clarified in Principle of Law no. 1 of 10 January 2023, affirmed that the ineffectiveness of the settlement agreement concluded in the context of the certified reorganization plan, in the absence of payments, does not determine the obligation to issue the debit note.

In such a circumstance, the debtor's obligation remains, in any event, unfulfilled. In fact, the non-fulfilment of the certified plan of reorganization gives rise to the presumption of the finality of the "ascertained failure to pay by the assignee principal".

## ORDERS

- ✓ **Approval of the new communication model for the use of tax credits for investments in the “Mezzogiorno, SEZs and FTZs” ([Italian Tax Authorities Order no. 188347 of 1 June 2023](#))**

The Italian Tax Authorities have updated the communication form for the use of tax credits for investments made in the South of Italy and the relevant instructions.

In particular, the submission of the communication using the new form is permitted from 8 June 2023. Furthermore, the form must be submitted by 31 December of the year following the one in which the acquisitions are made.

The telematic transmission of the model must be carried out using the “CIM23” software.

Finally, the model has been simplified by eliminating the boxes from 2016 to 2022 and inserting a single box for investments made in the year.

- ✓ **Notifications for the promotion of spontaneous compliance with regard to persons for whom it appears that they have failed to file a VAT return for the 2022 fiscal period ([Italian Tax Authorities Order no. 210441 of 13 June 2023](#))**

The Italian Tax Authorities have defined the procedures by which information on possible inconsistencies concerning the failure to submit the VAT return for the 2022 fiscal year, in filling in the return without the form VE or with supplies amounting to less than EUR 1,000 will be communicated to taxpayers and the Tax Police.

To this end, the Tax Authorities use information from electronic invoices, daily receipts and data on supplies of goods and services made and/or received to or from persons not established in the territory of the State.

In particular, notices will be transmitted to the digital domicile of the taxpayer and will be visible within the “Tax Box”, in the “Invoices and Receipts” section. In the same area, the taxpayer will have the opportunity to communicate any information deemed relevant or to request further information on the matter.



Finally, those who find themselves in the hypothesis of failing to file a VAT return may regularize their position by submitting the form, within 90 days of the deadline of 30 April 2023 (and therefore by 29 July 2023), accompanied by the payment of reduced penalties. In addition, persons who have omitted to submit the VAT return will also be able to access the institute of “voluntary correction”.

- ✓ **Definition of the modalities for the implementation of the tax credit for the adjustment, pursuant to art. 18, par. 4-bis of Law Decree no. 36 of 30 April 2022, of the instruments used for the telematic storage and transmission to the Italian Tax Authorities of the daily consideration data ([Italian Tax Authorities Order no. 231943 of 23 June 2023](#))**

The Italian Tax Authorities have defined the procedures for implementing the tax credit for the adaptation of computerized recorders and RT servers to the new provisions governing participation in the receipt lottery.

Specifically, the bonus, introduced by art. 8 of Law Decree no. 176/2022, amounts to 100 per cent of the expenditure incurred for the intervention on tax meters, up to a maximum of EUR 50 per instrument.

The credit may be off-set via the F24 form and is not subject to any general restrictions. The credit is granted with effect from the first periodic VAT settlement following the month in which the invoice for the cost of adapting the equipment was recorded in the purchase register.

To qualify for the subsidy, payment of the fee for the adjustment of the tax meter must be made “in a traceable manner”.

## RESOLUTIONS

- ✓ **Tax credits accrued by so-called “energy-intensive”/“gas-intensive” and “non-energy-intensive”/“non-gas-intensive” companies - applicability of the so-called 'remissione *in bonis*' ([Resolution no. 27/E of 19 June 2023](#))**

The Italian Tax Authorities have affirmed the possibility of remission *in bonis*, pursuant to art. 2 of Law Decree no. 16/2012, for failure to file the communication of energy and gas tax credits accrued in 2022, specifically those relating to the third and fourth quarters of 2022, which had to be submitted by 16 March 2023.

In fact, in the Italian Tax Authorities opinion, the communication does not represent a constitutive element of the credits referred to and its omission does not determine the non-existence of the credits themselves but does prevent their use in offsetting, if the same has not already been done by 16 March 2023, since it is, therefore, a formal fulfilment.

If the requirements are fulfilled, the remission *in bonis* may be made by the deadline for the use of such credits in compensation, i.e. 30 September 2023.

## LAW PRINCIPLE

- ✓ **Option for access to the branch exemption regime - remission *in bonis* – Art. 168-ter of Presidential Decree no. 917 of 22 December 1986 ([Law Principle no. 10 of 13 June 2023](#))**

The Italian Tax Authorities have stated that companies that have not opted for the branch exemption regime of the art. 168-ter of the TUIR, despite meeting the conditions to access this regime and the intention to avail themselves of it, are not allowed to rectify the breach through the institution of remission *in bonis*.

In fact, in the opinion of the Italian Tax Authorities, the fulfilment provided for to that end, i.e. the indication of the income of the foreign permanent establishment in a separate form of the “RF framework”, would not fall within the notion of “fulfilment of a formal nature”, the omission of which, pursuant to art. 2 of Law Decree no. 16/2012, may be regularized by remission *in bonis*.

- ✓ **Transactions between “Italian” permanent establishments of companies belonging to a foreign VAT group - VAT relevance – Art. 7 and 70-quinquies of Presidential Decree no. 633 of 26 October 1972 ([Law Principle no. 11 of 13 June 2023](#))**

The Italian Tax Authorities held that transactions carried out between two Italian permanent establishments of two foreign companies included in a foreign VAT group, located in a different EU Member State, are considered VAT relevant in Italy if they are actually attributable to those permanent establishments.

## II. LAW UPDATE

- ✓ **[Law Decree 114 June 2023 no. 69](#) "Urgent provisions for the implementation of obligations arising from acts of the European Union and from infringement and pre-infringement proceedings pending against the Italian State"**

On 14 June 2023, a Law Decree was approved containing urgent provisions for the implementation of obligations arising from European Union activities and from pending infringement and pre-infringement proceedings against the Italian State (OJ General Series no. 136 of 13 June 2023).

In particular, among the most relevant infringement procedures on which the Law Decree intervenes is the one concerning the facilitation of registration tax for the purchase of the so-called first home for persons transferred abroad.

According to these changes, if the purchaser has moved abroad for work reasons and has resided or carried out its activity in Italy for at least five years, the property purchased must be located in the municipality of birth or in the municipality where it had its residence or carried out its activity before the transfer in order to access the benefit.

- ✓ **[Ministerial Decree of 26 June 2023 Ministry of Economy and Finance](#) “Provisions for the implementation and coordination of the rules contained in art. 1, par. 87 to 95, of Law no. 197 of 29 December 2022, concerning substitute tax on foreign profits and profit reserves”**

The Ministerial Decree of 26 June 2023, accompanied by an illustrative report and a technical report, on the subject of the substitute tax option on foreign profits and profit reserves, provided for to overcome the difficulties related to the verification of the origin of the profits (OJ General Series no. 147 of 26 June 2023).

With this option, the taxpayer tax profits and profit reserves with a substitute tax, regardless of whether they originate in privileged tax countries.

Specifically, the measure applies to profits and profit reserves not yet received as of 1 January 2023, disclosed in the financial statements relating to the fiscal year ended in the fiscal period prior to the one in progress on 1 January 2022 of the foreign investee, not applying ordinary taxation at the time of receipt in Italy as provided for by art. 47, par. 4, and 89, par. 3, of the TUIR.

In particular, this possibility is recognized:

- to resident participants, i.e. individual businesses and partnerships, excluding simple companies (subject to IRPEF and its equivalent), joint-stock companies, cooperative societies and entities engaged in business activities (subject to IRES);
- non-resident participants, i.e. those which, although not resident in Italy, exercise a commercial activity in the territory of the State through a permanent establishment.

The taxpayer has a full choice as to the amount of profit to be subject to substitute tax, thus being able to decide both which foreign investee company to consider and the amount of profits and profit reserves to be taken into account for the purposes of the substitute tax to be paid.

In addition, the option must be exercised by indicating it in the tax return for the tax year ending 31 December 2022.

In addition, the Ministerial Decree at stake specifies the procedures for calculating and paying the substitute tax. In particular:

1. the substitute tax is determined on the amount of profits and profit reserves in foreign currency converted according to the exchange rate on the closing date of the financial year in progress on 31 December 2022 and, therefore, according to the exchange rate recorded on the day preceding the day on which the option becomes effective;
2. payment of the substitute tax must be made in a lump sum by the due date for the balance of income taxes due for the tax period ending 31 December 2022, i.e. 30 June, with no possibility of offsetting.

- ✓ [Law Decree no. 79](#) “Urgent provisions in support of households and businesses for the purchase of electricity and natural gas, as well as on legislative deadlines” (Law Decree “Bollette-bis”)

Law Decree no. 79 of 28 June 2023 introduced a series of measures to support households and businesses in the purchase of electricity and natural gas (OJ General Series no. 149 of 28 June 2023).

In particular, measures to strengthen the social electricity and gas bonuses for economically disadvantaged and severely ill households have been foreseen.

In addition, it was specified that supplies of methane gas used for combustion for civil and industrial purposes are subject to a VAT rate of 5 per cent, instead of the ordinary 22%

### III. CASE-LAW UPDATE

- ✓ **Mother-daughter dividends (Supreme Court, 8 June 2023, no. 16173)**

The Supreme Court has ruled on the issue of mother-daughter dividends, affirming the principle of law that when the person claiming the benefits provided for is not the “actual beneficiary” there is an element in determining abuse.

The Supreme Court, with this decision, recognizes the fact that the beneficial owner clause, which applies to the Interest and Royalties Directive, is extraneous to the mother-daughter Directive, being able to deny the dividend exemption regime only in those cases where there is an actual situation of abuse of law, i.e. where an attempt is made to unlawfully pass on to a non-EU company, a benefit that is only due to EU companies.

✓ **Confiscation today bargainable but not if compulsory (Supreme Court, Criminal Section III, 13 June 2023, no. 25317)**

The Supreme Court dwells on the novelty of the criminal trial, affirming the principle that confiscation remains mandatory and is not subject to *plea* bargaining.

Specifically, the Supreme Court, referring to the new art. 444, par. 1, of the Italian Code of Criminal Procedure, clarifies that it does not make the *plea* bargaining of a confiscation considered obligatory by the criminal justice system.

Art. 12-bis of Legislative Decree no. 74/2000 provides in any case for the application of confiscation on the assets constituting the profit or the price of the offence in the event of conviction or application of the confiscation upon request of the parties.

✓ **Entrusting bookkeeping to an accountant - Subjective and objective element (Criminal Supreme Court, 14 June 2023, no. 25585)**

The Supreme Court has ruled on the entrusting of bookkeeping to an accountant, stating that criminal liability remains with the legal representative of the company, as he is obliged to keep the documentation considered relevant, and this liability is not precluded if the documentation is entrusted to a professional.

Also relevant is the destruction or concealment of passive invoices, as they not only qualify as documents representing costs incurred by the company, but also demonstrate the existence of revenue for the issuer.

✓ **Relationship between losses, dissolution of the company and recapitalization resolution - Time limits within which to act (Supreme Court, 15 June 2023, no. 17139)**

The Supreme Court affirmed the exclusion of liability of the director of a company, whose share capital has fallen below the legal minimum due to losses, who has not ascertained the cause for dissolution of the corporate contract, in the event that a capital increase capable of restoring it has taken place. This is because it eliminates *ex tunc* the cause for dissolution pursuant to par. 1, no. 4, art. 2484 of the Civil Code.

However, the failure to call the shareholders' meeting could constitute grounds for the directors' liability to the company.

Specifically, the cause for dissolution in question arises, if the measures provided for in art. 2447 of the Civil Code are not adopted, only when the loss for the year exceeds one-third of the share capital and is capable of causing it to fall below the legal minimum.

So, no reference is made to the hypothesis that the loss, although leading to the reduction of the capital below the legal minimum, is equal to or less than one third of that capital.

✓ **Partial assignment of VAT credit (Supreme Court, 19 June 2023, no. 17466)**

The Supreme Court clarified, mentioning art. 5, par. 4-ter, of the Law Decree no. 70/1988, that the VAT credit may also be assigned in part, since there are no explicit limitations to it.

To that end, the Supreme Court reaffirms the principle that the limits established by art. 1 of Ministerial Decree no. 384 of 30 September 1997, which are applicable for direct tax purposes, are not applicable in the field of VAT.

✓ **Particular tenuousness of the fact - Conduct subsequent to the offence - Payment of tax debt (Criminal Supreme Court, 28 June 2023, no. 28031)**

The Supreme Court dwells on the amendments introduced to Legislative Decree 150/2022, stating that in cases of non-punishability due to the particular tenuousness of the act (art. 131-bis of the Italian Criminal Code), conduct subsequent to the commission of the offence is also relevant.

According to what the Supreme Court said, *post-delictum* conduct cannot in itself give particularly trivial an offence that was not such at the time of the commission of the act. In fact, such conduct will have to be assessed in the overall assessment of the *quantum* of the offence, basing it in the first place on the time of the commission of the act and, subsequently, on the assessment of the damage or danger incurred as a result of that conduct.

The Supreme Court, recalling the scope of application of the omitted VAT payment, and that of tax offences, affirms that the payment of the tax debt must be taken into account, for the purposes of particular tenuity, where it is not made within the terms provided for the different cause of non-punishability provided for in art. 13 of Legislative Decree no. 74/2000.

## IV. EUROPEAN UNION

### CASE LAW

✓ **Surplus quantity of goods discovered after the granting of release - Lodging of a new customs declaration - Necessity ([Court of Justice of the EU, Sect. IX, 8 June 2023, C-640/21](#) “SC Zes Zollner Electronic SRL”)**

The EU Court of Justice has affirmed the principle that customs declarations are precluded from being amended if the declarant was mistaken about the quantity of the goods declared.

In fact, according to the Court, the amendment of the customs declaration is not envisaged in cases where the trader has mistakenly declared a quantity of goods other than that actually imported. Specifically, the Court clarifies that the possibility of amending the material elements of the customs declaration must be strictly limited. This is to prevent the changes made to the declaration from enabling the declarant to evade his obligations under the legislation in force.

In particular, the EU Court of Justice recognizes the principle that the customs declaration, once filed and accepted by the computerized system, becomes irrevocable. Operators have to indicate in the declaration all the data required by the system, so as to facilitate the correct collection of customs duties.

The Court also excluded the possibility of applying the institution of invalidation of the customs declaration, as envisaged by art. 174 of the Union Customs Code. That institution, which is activated by the explicit request of the operators, allows the Customs Authorities to invalidate the customs declaration even after acceptance, but before release of the goods has been granted.

- ✓ **Concept of fixed establishment – Suitable structure in terms of human and technical resources - Territoriality of services ([Court of Justice of the EU, Sect. X, 29 June 2023, C-232/22](#) “Cabot Plastics Belgium SA”)**

With its judgment in Case C-232/22, the Court of Justice examined the case of the establishment of a fixed establishment for VAT purposes by a taxable person who is a recipient of services and has the seat of his economic activity outside the EU.

Such a taxable person, according to the Court, does not have a fixed establishment in the Member State in which the provider of the services concerned, which is legally independent from that recipient, is established, where that recipient does not have a suitable structure in terms of human and technical resources capable of constituting that fixed establishment, even where the taxable person receiving services, pursuant to an exclusive contractual undertaking, tolling services and a series of ancillary or additional services, contributing to the business of taxable person receiving services in that Member State.

It follows from the case law of the Court that the same means cannot be used at the same time to provide and to receive the same services (Judgment of 7 April 2022, “*Berlin Chemie A. Menarini*” - C-333/20).

In order to prove the place where the services are received by the non-EU customer, it is necessary to examine not the taxable person providing the services, but the taxable person receiving the services, and to identify the place where the human and technical means that this company uses for this purpose are located, and not the place where the means it uses for its sales activity are located.

For that reason, in the view of the courts, it is irrelevant, for the purposes of determining whether there is a fixed establishment of the taxable person contracting out, whether the supplier also provides the recipient with “ancillary” or “supplementary” services, in relation to the work for third parties, facilitating his economic activity.

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