FIVELEX
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Tax | Update

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MINISTERIAL PRACTICE

CIRCULARS

✓ **Postponement of the payment of the second instalment of advance payment of income tax – Art. 4 of Law Decree no. 145 of 18 October 2023 (Circular No. 31/E of 9 November 2023).**

With Circular no. 31/E of 9 November 2023, the Italian Tax Authorities provided clarifications with reference to the postponement of the payment of the second instalment of the advance payment of income tax, provided for by the Law Decree no. 145/2023.
In particular, it is specified that individuals with a VAT registration number who have declared, with reference to the 2022 tax period, revenues or remuneration not exceeding EUR 170,000 (even if they are required to pay the advance in a single instalment) may benefit from the extension. Individuals who do not have a VAT registration number and persons other than individuals (i.e. corporations and non-commercial entities) are excluded.

REPLIES TO REQUESTS FOR ADVANCE TAX RULING

✓ **Capital income (Reply to request for advance tax ruling no. 452 of 2 November 2023).**

With its reply to request no. 452 of 2 November 2023 concerning capital income, the Italian Tax Authorities clarified that under Art. 60, par. 1, Law Decree no. 50/2017, income deriving from direct or indirect participation in companies, entities or undertakings for collective investment, received by employees and directors of such companies, entities or undertakings for collective investment, or of persons linked to them by a direct or indirect relationship of control or management, if related to shares, quotas or other financial instruments with enhanced property rights, is considered capital income, if the conditions identified in par. 1, letters a), b) and c) are met.
Circular no. 25/E of 16 October 2017 clarified that the absence of one or more of the aforementioned conditions does not lead to the automatic qualification of the income as work-related income but requires a case-by-case verification to attribute a financial nature to the amount in question.

✓ **Tax obligations to be borne by the permanent establishment in Italy of a foreign bank in the case of securities deposit and custody activities carried out by the foreign bank in execution of contracts entered into directly by the foreign bank (Reply to request no. 453 of 6 November 2023).**

The Italian Tax Authorities, with their reply to request no. 453 of 6 November 2023, provided guidance on the tax obligations to be fulfilled by a permanent establishment in Italy of a foreign bank in the hypothesis of securities deposit and custody activities carried out by the foreign bank in execution of contracts entered into directly by the foreign bank.
This reply consists of 8 questions, in which the following is stated:

1) With reference to question 1 concerning the possibility that the Permanent Establishment may take on the role of tax representative, the Italian Tax Authorities consider

that if the requirements for exemption are not met for a non-resident investor, the second-tier bank ("banca di secondo livello") must apply the substitute tax as well as carry out the consequent fulfilments also through its tax representative.

2) With reference to question 2 concerning the joint and several liability of the Permanent Establishment, in its capacity as the tax representative of the Head Company, with the latter, towards the tax authorities, exclusively for tax obligations and related administrative sanctions, it must be taken into account, in the present case, that the Permanent Establishment (acting as tax representative) is not a subject having autonomous legal subjectivity distinct from the Head Company. Given the subjective unicity between the Italian Permanent Establishment and the Head Company, therefore, it is improper to speak of joint liability between them for tax penalties, since there is no third party liable for the infringement. It follows that the Head Company is liable to the Tax Authorities for any breach committed by the Permanent Establishment, including those committed in its capacity as tax representative.
3) With reference to question 3 concerning the possibility for the Permanent Establishment to act as a financial intermediary, the Italian Tax Authorities said that non-resident entities and companies that adhere to centralized securities management systems and have direct relationships with the Tax Authorities are considered as second-tier banks. In this regard, the foreign second-tier bank is responsible for the application of the substitute tax, through the tax representative, also with respect to customers resident in Italy. On the basis of what has been represented, the Head Company will be able to operate, following its qualification as a second-tier bank, as an intermediary authorized to apply Legislative Decree no. 239 of 1996 also towards customers resident in State with reference to the securities and financial instruments administered by it.
4) With reference to question 4 concerning whether the Head Company, and not its Italian Permanent Establishment, is the entity in charge of keeping the records relating to the single account, the Italian Tax Authorities consider that the entity responsible to the Tax Authorities for maintaining and setting up the single account is the foreign second-tier bank, in its capacity as the intermediary with which the customer holds the deposit relationship, and the tax representative may manage the movements of the aforesaid account. This interpretation is also deemed applicable to profits from shares placed in an authorized and centralized deposit system. Moreover, the principles set forth above with respect to the holding of the single account also extend to the substitute tax on dividends from shares in listed real estate investment companies (SIIQ).
5) With reference to question 5, in which it is asked whether the Head Company is the person in charge of sending the communications referred to in Art. 8, par. 3, of Legislative Decree no. 239 of 1996, and in Art. 7 of Ministerial Decree no. 632 of 1996, the Italian Tax Authorities stated that, the Head Company will be required to send the aforesaid communications if it is accredited as a second-tier bank and the Permanent Establishment, as the tax representative of the Head Company, will be able to perform the related fulfilments.
6) With reference to question 6 concerning the tax code under which the Head Company and the Permanent Establishment must operate in Italy, please note that the foreign tax substitute must use the same tax code attributed to the Italian Permanent Establishment.

7) With reference to question 7 in which it has been asked for confirmation that the Permanent Establishment as fiscal representative is required to submit Form 770 ("Modello 770"), please note that the Permanent Establishment must include in Form 770 the frameworks pertaining to the Head Company and indicate the tax code only on the title page of Form 770.
8) With reference to question 8 concerning the applicability of the stamp duty pursuant to Art. 13, paragraph 2b, of the Tarif, part one, annexed to Presidential Decree no. 642 of 1972 due for periodical communications from the Head Company to customers relating to financial products, the securities deposit relationship established is held abroad by a foreign entity (the Head Company) which is required to send communications relating to the relationship itself. For the purposes of the application of stamp duty, there is no subjective requirement.
9) With reference to question 9 concerning the obligations to transmit communications to the Tax Registry Office, the Italian Tax Authorities believe that no communication to the Financial Reports Archive will have to be made by the Head Company with respect to the securities custody and administration services contracted by the applicant with its customers due to the lack of the territoriality requirement required by the above-mentioned communications.

✓ **Interest deriving from bonds - Application of the exemption regime provided for non-residents – Art. 6 of Legislative Decree no. 239 of 1 April 1996 (Reply to request for advance tax ruling no. 5454 of 7 November 2023).**

The Italian Tax Authorities, with their reply to request no. 454 of 7 November 2023, clarified that, for the purposes of the application of the exemption regime provided for by Legislative Decree no. 239 of 1996 on interest, premiums and other incomes of bonds and similar securities, the notion of foreign institutional investor identifies entities that, regardless of their legal status and the tax treatment to which their income is subject in the country in which they are incorporated, have as the object of their activity the making and management of investments for their own account or for the account of third parties.
With specific reference to the subjective profile of the exemption regime set forth in Art. 6 of Legislative Decree no. 239 of 1996, it was emphasized that this provision provides that interest, premiums and other incomes of bonds and similar securities referred to in Art. 2, par. 1, received by persons resident in States and territories that allow an adequate exchange of information are not subject to taxation.
Not subject to taxation are interest, premiums and other incomes of bonds and similar securities received by international entities or bodies constituted on the basis of international agreements made enforceable in Italy, foreign institutional investors, even if not subject to taxation, constituted in countries referred to in the preceding sentence, and central banks or bodies that also manage the official reserves of the State.
From a subjective point of view, therefore, persons resident in white-list States and territories, i.e., individuals, companies partnerships and any other entity that is considered a taxable person for tax purposes, fall within the exemption regime from the substitute tax set forth in Legislative Decree no. 239 of 1996.

✓ **Partial proportional demerger followed by the facilitated transformation of the beneficiary into a simple partnership pursuant to Law no. 197 of 2022 - transfer by the simple partnership of the property received as a result of the demerger -**

liquidation and cancellation of the simple partnership - anti-abuse assessment pursuant to Art. 10 bis of Law no. 212 of 2000 for the purposes of direct and indirect taxation (Reply to request for advance tax ruling no. 456 of 10 November 2023).

The Italian Tax Authorities, in their reply to request no. 456 of 10 November 2023, ruled on the partial proportional demerger followed by the facilitated transformation of the beneficiary into a simple partnership, the transfer by the simple partnership of the property received as a result of the demerger, and the liquidation and cancellation of the simple partnership.

The Budget Law 2023 (Art. 1, paragraphs 100 to 105, Law no. 197 of 2022) allows, by means of the payment of a substitute tax, the assignment and facilitated sale to shareholders of real estate other than instrumental property by destination and of movable property registered in public registers, as well as the transformation into simple partnership of companies whose exclusive or main purpose is the management of the aforesaid assets.

The facilitation rules, therefore, apply to sales, assignments or conversions into a simple partnership carried out within 30 November 2023.

The ratio of the regulations on facilitated assignment to shareholders and facilitated transformation into a simple partnership is to allow the removal of assets from the business regime by reducing the corresponding tax through:

- the choice of the value to be attributed to the assets to be disposed of for the purposes of calculating the capital gain relating to the facilitated assignment, sale or transformation into a simple partnership (i.e. the normal value or the cadastral value determined pursuant to Art. 52, par.4, of Presidential Decree no. 131 of 1986) and,
- the application of a substitute tax for IRES and IRAP.

This also applies in the event that the transformation or assignment is preceded or followed by other transactions (such as the change of use of the property in Circular no. 26/E of 2016, the demerger in the case of Order no. 101/E of 2016 or the sale of the property by the shareholders assigned in Order no. 93/E of 2016), which are in any case aimed at the removal of the assets from the business.

The ratio of the provisions concerned does not appear to allow the same facilitating provisions to be instead exploited to ensure that the shareholders of the company, whose assets are removed from the business regime, receive income (real estate capital gains) deriving from the transfer to third parties of the aforesaid assets, essentially immediately zeroing the relative taxation.

This is confirmed in Order no. 93/E of 2016, in which the absence of an undue advantage was affirmed in relation to a concrete case in which:

- the assignment of the real estate to the shareholders (preparatory to their subsequent sale to third parties) took place at normal value and, therefore, the capital gain "from the assignment" on which to apply the substitute tax was determined as the difference between the aforesaid normal (i.e., market) value of the real estate and the cost relevant for tax purposes for the company, causing the entire capital gain accrued on the assets assigned to the shareholders to be subject to taxation; and
- the partners would still have paid the additional real estate gains according to the ordinary rules accrued on the assigned assets with respect to the (normal) assignment value.

With reference to the case examined, the Italian Tax Authorities held that, for direct tax purposes only, the set of transactions represented constitutes a case of abuse of rights within the meaning of Art. 10-bis of Law no. 212 of 2000.

✓ **Facilitated assignment of assets to shareholders pursuant to Law no. 197 of 2022 - contract in favor of a third party not having the status of shareholder - inapplicability (Reply to request for advance tax ruling no. 457 of 10 November 2023).**

The Italian Tax Authorities, in their reply to request no. 457 of 10 November 2023 clarified that the conclusion of a contract in favor of a third party who is not a shareholder, with respect to the hypothesis of a facilitated assignment of assets, has the concrete effect of determining the transfer of the ownership of the assets, subject to the assignment, directly to the third-party beneficiary, who is not a shareholder, that it is a mandatory requirement for the application of such rule.
Art. 1, paragraphs 100-105 of Law no. 197 of 2022 has re-proposed the facilitated tax regime that allows the assignment and facilitated transfer to shareholders of real estate other than instrumental property by destination and of movable property registered in public registers, as well as the transformation into simple partnership of companies whose exclusive or main purpose is the management of the aforesaid property.
Pursuant to the provisions of paragraphs 100 and 101, such facilitation allows the right of the companies concerned, under certain conditions, to assign or transfer the assets to their shareholders or to transform themselves into simple partnership, by paying a substitute tax for direct tax purposes and the application of the proportional registration tax rates, if applicable, reduced by half, and the fixed mortgage and cadastral taxes.
The facilitation rules, therefore, apply to sales, assignments or conversions into a simple partnership carried out within 30 September 2023.
Such rules were clarified by Circulars nos. 26/E of 2016 and 37/E of 2016, as well as Order no. 93/E of 2016, the contents of which are also applicable, insofar as they are consistent, to the corresponding facilitation regime in force today.
Similarly, to what was clarified in the illustrative report to the 2016 Stability Law, the facilitated regime under review is aimed at the exit from companies of real estate assets that could potentially then be re-entered into the real estate market, thus favoring the circulation of the assets themselves and at the same time bringing new life to the market itself.
The adoption of a contract in favor of a third party who does not have the status of shareholder in the case of a facilitated assignment of assets has the concrete effect (in case of acceptance communicated to the promisor) of determining the transfer of ownership of the assets, the object of the assignment, directly to the third-party beneficiary, who does not have the status of shareholder of the assigning company.

✓ **Closure of bankruptcy "pending litigation" – "dies a quo" for the purposes of issuing the credit note – Art. 26 of Presidential Decree no. 633 of 26 October 1972 (Reply to request for advance tax ruling no. 471 of 29 November 2023).**

The Italian Tax Authorities, with their reply to request no. 471 of 29 November 2023, clarified that, in the event of bankruptcy proceedings commenced before 26 May 2021, the previous provision of Art. 26 of the VAT Decree, which, by fixing the "dies a quo" for

the issuance of the credit notes at the time when it is certain that the bankruptcy procedure is not fruitful in the event of the closure of the bankruptcy proceedings pending the judgements, requires to wait for the end of the judgements and the enforceability of any supplementary distribution plan.
For bankruptcy proceedings opened prior to 26 May 2021, the prerequisite for issuing the credit note for “non-payment in whole or in part due to unsuccessful bankruptcy proceeding”' is fulfilled when the creditor's claim remains unsatisfied “due to the lack of available sums, once the distribution of assets has been complete”, or when 'there is a reasonable certainty that the debtor's assets are insufficient”.
On the basis of Art. 118 of Decree no. 267 of 16 March 1942, the closure of bankruptcy when the final distribution of the assets is completed is not prevented by pending litigation, in respect of which the liquidator may maintain procedural legitimacy, even in the subsequent stages and levels of proceedings.
Therefore, in case of the closure of the bankruptcy when there are pending litigation, the credit notes issued pursuant to Art. 26, par.2, of the VAT Decree (version in force prior to 26 May 2021), may generally be issued only at the closure of the litigation, following the enforceability of any supplementary distribution plan.

✓ **Purchase of tax credits from tax bonuses pursuant to Articles 119 and 121 of Law Decree no. 34 of 2020. Income relevance arising from the difference between the tax credit due and the purchase cost (Reply to request for advance tax ruling no. 472 of 30 November 2023).**

With their reply to request no. 472 of 30 November 2023, the Italian Tax Authorities clarified, about the purchase of tax credits from tax bonuses, that - with regard to the tax regulation of professional associations - reference should be made to Article 5, par. 3, letter c), TUIR, which assimilates, for the purposes of determining income, associations without legal personality constituted between individuals for the exercise in associated form of arts and professions to simple partnership by reason of the presence of the same constituent elements.
The legislation allows taxpayers, who carry out certain interventions, to benefit from a deduction from the gross tax in alternative ways to the direct use in the declaration and through the assignment to third parties of a tax credit of the same amount without providing for any rules on the possible income effects on the purchaser.
The legislator has precisely regulated the hypothesis of the assignment of a tax credit in the amount of the deduction due as well as the way the assignee may use this credit to offset his own taxes and contributions due, with the same division into annual instalments with which the deduction would have been used.
The rule expressly provides that any portion of the tax credit not used in the year cannot be used in subsequent years and cannot be claimed back.
There are no specific law provision stating for the relevance for fiscal purposes of income deriving from the purchase of the aforesaid credit at a value lower than its nominal value, as well as it is not relevant for fiscal purposes any negative difference resulting from the failure to use the credit for offsetting purposes, given that it is not possible to carry forward or request the reimbursement of any portion of the tax credit not used in each year.
Therefore, in the absence of a specific provision, for the tax relevance of this differential general rules of income taxation must be considered.

Regarding individuals who do not have business income, as well as associations formed between individuals for the exercise in associated form of arts and professions, it must be assessed whether this positive differential falls into one of the income categories under Art. 6 of the TUIR.
Therefore, in the absence of an express law provision aimed at attributing income relevance to any positive differential between the nominal amount of the receivable and the purchase price thereof and given the fact that such difference does not fall under one of the income categories provided for by the TUIR, the purchase does not, in principle, generate taxable income for the Associated Firm.

RESOLUTIONS

✓ **Institution of the tax codes for the payment of the amounts due following the communications sent pursuant to Article 36-bis of Presidential Decree no. 600/1973 (Italian Tax Authorities Resolution no. 60/E of 8 November 2023)**

The Italian Tax Authorities, with Resolution no. 60/E of 8 November 2023 established the new tax codes for the payment of the amounts due following the communications sent pursuant to Article 36-bis, Presidential Decree no. 600 of 1973 (automatic controls of tax returns).
The new codes - from 936G to 931H - allow the payment via F24 form of the amounts due if the taxpayer intends to pay only a portion of the full amount indicated in the pre-filled payment form attached to the communication.

✓ **Tax Monitoring Obligations for Insurance Companies – Art. 1 of Law Decree no. 167 of 28 June 1990 (Italian Tax Authorities Resolution no. 62/E of 13 November 2023).**

The Italian Tax Authorities, with Resolution no. 62/E of 13 November 2023, provided clarifications on the tax monitoring obligations of insurance companies.
In particular, the Italian Tax Authorities have clarified that for foreign insurance companies, operating in Italy under the freedom to provide services (Lps) regime, which opt for the taxation of insurance capital gains pursuant to Art. 26, ter. par. 3, Presidential Decree no. 600 of 1973, the exemption from tax monitoring obligations is recognized if in the cross-border transaction there is the intervention of a resident financial intermediary able to track the flows through the Italian banking and financial circuit.
It is clarified that in the case of a cross-border transfer involving more than one intermediary, the tax monitoring performed by one of these intermediaries exempts the other intermediary from compliance (in case evidence of the reporting by the intermediary that performed the tax monitoring is provided).

PROVISIONS

✓ **Update of the model of declaration of inheritance and application for land registries ("volture catastali"), of the relevant instructions and technical specifications for telematic transmission (Italian Tax Authorities Provision no. 396213/2023 of 8 November 2023)**

With Provision no. 396213/2023 of 8 November 2023, the Italian Tax Authorities, in order to adapt the declaration form to the recent interpretative clarifications made with Circular no. 29/E of 2023 on the treatment of the "inheritance and gift covenant"("Coacervo successorio e donativo"), has provided for amendments to the form for the declaration of inheritance and application for land registries ("volture catastali"), as well as to the relevant instructions for their compilation and amendments to the technical specifications for the telematic filing of data relating to the declaration of inheritance and application for land registries ("volture catastali"), as well as amendments to the software used.
The new version of the form can be used from 9 November 2023 and the Italian Tax Authorities make the software available on its website.
However, until 9 January 2024, for declarations already prepared that only need to be sent, taxpayers may use the previous version of the software.

✓ **Procedures for communicating tax credits that cannot be used, pursuant to Article 25, par.1, of Law Decree no. 104 of 10 August 2023 (Italian Tax Authorities Provision no. 2023/410221 of 23 November 2023).**

With Provision no. 2023/410221 of 23 November 2023, the Italian Tax Authorities provided guidance on how to report unused tax credits resulting from the exercise of the options under Article 121, par. 1 (a) and (b) of Law Decree no. 34 of 19 May 2020.
The subject of the notification is not used bonuses, i.e. bonuses for which the constitutive prerequisites do not exist.
The communication is filed starting from 1 December 2023 through a special web service available in the reserved area of the Italian Tax Authorities' website, within the "Credit Transfer Platform", directly by the last assignee holder of the credits.

UPDATE ON REGULATION

✓ **Implementation of Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards the introduction of certain obligations for payment service providers (Official Journal General Series no. 257 of 03-11-2023).**

Legislative Decree no. 153 of 18 October 2023 was published in the Official Journal no. 257 of 3 November 2023, which implements the content of EU Directive 284/2020 on the obligations on providers of payment services aimed at preventing VAT fraud on sales of goods or supplies of services carried out - often via e-commerce - to consumers located in Member States other than that of the seller.
The Decree amends the provisions of Articles 40-bis to 40-sexies of Presidential Decree no. 633 of 1972, introducing new rules for payment service providers concerning the retention by them of documentation on cross-border payees and payments made in each calendar quarter.
The modalities for locating the payer and the payee necessary for identifying cross-border payments and the information to be stored and sent to the tax authorities are also laid down.
The Italian Tax Authorities will enter the information into the central electronic payment information system (Cesop), which enables Member States to cross-reference data in order to combat VAT fraud.

✓ **Provisions on certification attesting the qualification of research and development, technological innovation and design activities (Official Journal General Series no. 258 of 04-11-2023)**

The Presidential Decree of the Council of Ministers (D.P.C.M.) of 15 September 2023 was published in the Official Journal no. 258 of 4 November 2023, which lays down provisions on certification attesting to the qualification of research and development, technological innovation and aesthetic design activities.
The Decree refers to the tax credit provided by paragraphs 203 to 203-quater of Art. 1 of Law no. 160 of 2019 (Budget Law 2020) as well as to the qualification of research and development activities pursuant to Art. 3 of Law Decree no. 145/2013, converted, with amendments, by Law no. 9 of 2014, and finally to the qualification of technological innovation activities aimed at the achievement of digital innovation 4.0 and ecological transition objectives, for the purposes of the recognition of the increased tax credit for technological innovation activities provided for by the fourth sentence of par. 203 and by the subsequent paragraphs 203-quinquies and 203-sexies of Art. 1 of Law no. 160 of 2019.
The Decree establishes the register of certifiers authorized to issue certifications, which will be held at the Direzione Generale per la politica industriale, l'innovazione e le PMI of the Ministry for Enterprise and Made in Italy.

CASE LAW UPDATE

✓ **Use of an accrued tax credit in an amount equal to the assessed taxes (Supreme Court, Tax Section, Judgment no. 30680 of 3 November 2023)**

The Italian Tax Authorities served a taxpayer with two notices of assessment, with which it reclaimed for taxation, for IRES and IRAP purposes for the year 2010, certain negative income items erroneously deducted, as they pertained to the previous year. In the tax assessments, the Italian Tax Authorities recognized, for the company, a tax credit accrued for the year 2009 in an amount equal to the taxes assessed for 2010.
The taxpayer agreed to the findings made for the year 2010 and, consequently, proceeded with the offsetting of IRES and IRAP liabilities against the tax credit accrued for the previous year, paying interest and penalties for unfaithful tax returns reduced to one-sixth of those imposed.
The judges noted that the taxpayer paid higher taxes for the year 2009 but he requested the reimbursement of the interest allegedly unduly paid at within the scope of the settlement.
This circumstance precluded the reimbursement of interest since the settlement entailed a substantial waiver of any claim on the sum subject to assessment.
The applicant pleaded infringement of Art. 44 of Presidential Decree no 602. of 1973.
The Supreme Court has confirmed, in the field of direct taxes, serving of a notice of payment makes the taxpayer with the alternative between a formal challenge, or agreement to the claim by means of payment (or also by inactivity, followed by forced recovery). In the latter case, any possibility of reconsideration by the taxpayer, in whatever form it may be manifested, including the submission to the tax authorities of a claim for restitution of sums, remains excluded.

✓ **Time limit for submit an income tax refund application (Italian Supreme Court, Tax Section, Judgment no. 30793 of 6 November 2023).**

The subject-matter of the dispute concerns the payment of severance with application of IRPEF taxation following the reduction by 55.55% of the taxable amount, in consideration of the provisions of Sicilian Regional Law no. 2 of 6 March 2002.
The Italian Tax Authorities subsequently recalculated the severance payment and paid a further sum, but recalculated the amount owed in relation to the entire severance payment, thus also in relation to what had already been paid and applied a 50% tax reduction to the total amount, a percentage that the taxpayer considered not correct.
The taxpayer then applied for a refund, but the Italian Tax Authorities rejected it.
The taxpayer appealed against the above decision. The Provincial Tax Commission held that the applicant's arguments were well-founded and ordered the refund in its favor.
The Italian Tax Authorities appealed against before the Regional Tax Commission, contesting the forfeiture of the taxpayer's power to submit a refund request, and also the groundlessness of the claim for the application of a higher percentage reduction of taxable income.
The Regional Tax Commission reformed the first-degree decision, finding that the claim for reimbursement of the taxpayer was in delay and therefore the refund requested had to be rejected. The taxpayer appealed to the Supreme Court.
The Supreme Court, upholding the appeal, ruled that the time limit for the submission of an income tax refund application, provided for by Art. 38 of Presidential Decree no. 602 of 1973, although it runs from the day of the individual payments on account, in the event that these, already at the time they are made, turn out to be partially or totally not due, if the Italian Tax Authorities liquidates the IRPEF refund by applying the correct tax rate, and subsequently, the same The Italian Tax Authorities again settles the amount of the refund, applying an incorrect tax rate to the whole amount due, the taxpayer's rights are infringed by the effect of that second settlement, implying that the term referred to in the art. 38 of Presidential Decree no. 602 of 1973 begins from the date on which this second settlement was carried out.

✓ **Swiss certificate of residence - Right to reimbursement (Supreme Court, Tax Section, Judgment no. 30779 of 6 November 2023).**

The subject of the dispute concerns a taxpayer, an Italian citizen resident in Switzerland, who requested the refund of withholding taxes on his social security contributions for the years 2012-2013. Due to not sufficient documentation, the refund was rejected. In first degree litigation, the Provincial Tax Commission rejected the appeal of the taxpayer. On appeal, the Regional Tax Commission upheld the appeal. The Italian Tax Authorities then appealed before the Supreme Court.
The Supreme Court has held that the certificate of tax residence is sufficient to satisfy the conditions laid down in Art. 29, par. 2, with regard to the need to attach to the application for the refund of withholding tax on pensions a certificate certifying that the conditions required for such a right are met.
For these purposes, it is enough for the certificate to acknowledge both residence and the fact that the taxpayer's income and assets are subject to Swiss taxation, the explicit reference to the Convention (also present in the present case) not being necessary.

✓ **Penalty clause included in the lease agreement - Autonomous taxation (Supreme Court, Tax Section, Judgment no. 30983 of 7 November 2023)**

The dispute concerns the application of fixed registration tax in respect of a penalty clause contained in a lease agreement for the case of delay in returning the leased property.
The Italian Tax Authorities considered Art. 21, par.1, of Presidential Decree no. 131 of 1986 to be applicable.
The Regional Tax Court cancelled the notice issued by the Italian Tax Authorities, finding that Article 21, par.1, of Presidential Decree no. 131 of 1986 was not applicable to the penalty clause due to its intrinsic nature related to the essential content of the lease and, therefore, not independently taxable.
Faced with the appeal in cassation lodged by the Italian Tax Authorities, the Supreme Court reiterated the following principle of law: *"for the purposes of Art. 21 of Presidential Decree no. 131 of 1986, the penalty clause (in this case included in a lease agreement) is not subject to a separate registration tax, since it is subject to the rule of taxation of the more onerous provision provided for in the second paragraph of the aforementioned rule"*.

OTHER

✓ **Assonime Circular no. 30 of 16 November 2023 - OIC 34 on revenues topic: preliminary considerations on accounting and tax aspects**

The Circular provides an initial comment on the most interesting accounting and tax aspects arising from the application of the new national accounting standard on revenue (OIC 34). The standard is applicable to financial statements for financial years beginning on or after 1 January 2024.
In terms of accounting, the Circular focuses, on the similarities and distinctive aspects that distinguish OIC 34 from IFRS 15, i.e. the similar international accounting standard on revenue.
In terms of taxation, the Circular sets out the salient points that should be considered when defining the rules for coordinating the new accounting rules of OIC 34 with the rules for determining the taxable income for IRES and IRAP.

✓ **Italian Tax Authorities FAQ on the new Patent Box rules - Communication of possession of documentation**

With reference to the rules concerning the Patent Box and the burden of communicating the possession of the appropriate documentation in the tax return relating to the tax period for which the taxpayer benefits from the facilitation, the Italian Tax Authorities have published a new FAQ.
The Italian Tax Authorities have confirmed that the taxpayer has the burden of communicating annually, during the validity of the option for the new Patent Box, the possession of the appropriate documentation to benefit from the so-called “penalty protection”, by ticking box 2 of the appropriate line in the tax return.
This burden does not cease to apply if no new qualifying intangible assets are acquired, in relation to which the reference legislation requires a new option to be exercised.

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For information: info@5lex.it