

Tax | Update

December 2023

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UPDATE ON REGULATION

✓ [Budget Law 2024](#)

On 30 December 2023, Law no. 213 of 30 December 2023 ("Budget Law 2024") was published in the Official Journal no. 303.

In this respect, please refer to our related update.

✓ **Decrees implementing the Delegated Tax Reform Law no. 111/2023**

The following Legislative Decrees implementing the Delegated Tax Reform Law no. 111/2023 have been definitively approved and published:

- (i) Legislative Decree "*Fiscalità internazionale*" (International Taxation) ([Official Journal no. 301 of 28 December 2023](#));
- (ii) Legislative Decree "*Riforma IRPEF*" (Personal Income Tax Reform) ([Official Journal no. 303 of 30 December 2023](#));
- (iii) Legislative Decree "*Adempimento collaborativo*" (Cooperative compliance) ([Official Journal no. 2 of 3 January 2024](#));
- (iv) Legislative Decree "*Contenzioso tributario*" (Tax litigation) ([Official Journal no. 2 of 3 January 2024](#));
- (v) Legislative Decree "*Modifiche Statuto del contribuente*" (Changes to the tax payer's Bill of Rights) ([Official Journal no. 2 of 3 January 2024](#));

The following Legislative Decrees are still under final approval:

- (i) Legislative Decree "*Semplificazione degli adempimenti tributari*" (Simplification of tax compliance), finally approved by the Council of Ministers on 19 December 2023, and awaiting publication;
- (ii) Legislative Decree "*Accertamento*" (Tax assessment), approved in preliminary examination by the Council of Ministers on 19 December 2023, was assigned to the relevant Commissions of the Chamber of Deputies and the Senate for the formulation of the relevant opinions, to be expressed by 12 January 2024;
- (iii) Legislative Decree "*Riordino del settore dei giochi*" (Changes to the gambling sector), approved in preliminary examination by the Council of Ministers on 19 December 2023, was assigned to the relevant Parliamentary Committees for opinions.

✓ **Fixing of the Rate applicable to Legal Interest ([Official Journal no. 288 of 11 December 2023](#))**

The Decree of Ministry of the Economy and Finance dated 29 November 2023 was published in the Official Journal no. 288 of 11 December 2023, setting the legal interest rate (art. 1284 of the Italian Civil Code) at 2.5% per annum as of 1 January 2024.

The legal interest rate applied in 2023 was set at 5%. The reduction was adopted considering the average annual gross yield on Government bonds and the annual inflation rate recorded.

✓ **Conversion into Law of Law Decree no. 145 of 18 October 2023 - "*Anticipi*" Decree ([Official Journal no. 293 of December 2023](#))**

Law no. 191/2023 was published in the Official Journal no. 293 of 16 December 2023, which converted, with amendments, Law Decree no. 145/2023 on urgent measures on economic and fiscal measures, in favor of territorial entities, to protect labor and for non-deferrable needs.

The main provisions introduced upon conversion concern:

- (i) postponement of the deadline for applying for access to the research and development credit refund procedure from 30 June 2024 to 30 July 2024;
- (ii) amendment of the criteria for calculating *fringe benefits* paid in the form of loans to employees, applicable since 2023;
- (iii) for tax withholding agents providing tax assistance, elimination of the obligation to transmit electronically to the Italian Tax Authorities the data included in the forms relating to the choices of the 8, 5 and 2 per thousand of IRPEF (Form 730-1) and to keep a copy of these forms until 31 December of the second year following the year in which the declaration is submitted;
- (iv) introduction of the CIN (National Identification Code), which shall be assigned, upon request of the owner or lessor, to each property unit intended for tourist or short-term rental, as well as to hotel or para-hotel tourist accommodation facilities. Additional obligations in respect to the safety of the premises and the provision of different penalties for non-compliance with the various obligations, have been introduced;
- (v) possibility of access to the e-invoice consultation service issued to final consumers without the need for an explicit request;
- (vi) abrogation of the obligation (which was to take effect on 1 January 2024) to transmit daily receipts to the “*Sistema Tessera Sanitaria*”.

✓ **Law Decree no. 212 of 29 December 2023, Official Journal no. 302 of 29 December 2023 (“[Salva Superbonus](#)” Decree).**

Law Decree no. 212 of 29 December 2023 was published in the Official Journal no. 302 of 29 December 2023, on urgent measures relating to the tax benefits set forth in art. 119, 119-ter and 121 of Law Decree no. 34/2020, converted, with amendments, by Law No. 77/2020, concerning amendments to the regulatory framework regulating the superbonus, the architectural barriers bonus and the alternative options mechanism (invoice discount and credit assignment).

The main provisions introduced concern:

- (i) introduction of a safeguard clause for “SAL superbonus” until 31 December 2023 in case of non-completion of works;
- (ii) provision of a subsidy for low-income apartment buildings for the completion in 2024 with a 70% superbonus of works that have reached a state of completion of not less than 60% by 31 December 2023;
- (iii) crystallization of the deadline for requesting the planning permission in order to benefit from discounts and transfers pursuant to art. 121 Law Decree No. 34/2020 in relation to demolition and reconstruction works included in plans for the recovery of the existing building stock or urban requalification;
- (iv) introduction of compulsory insurance on earthquake-damaged buildings recovered with 110% superbonus;

- (v) restriction of the types of architectural barrier removal works whose expenses are deductible at 75% pursuant to art. 119-ter Law Decree no. 34/2020;
 - (vi) extension of the blocking of the discount or assignment options pursuant to art. 121 Law Decree no. 34/2020 also for expenses deductible with the “*bonus barriera 75%*” pursuant to art. 119-ter Law Decree no. 34/2020, with the sole exception of the specific exceptions to the blocking (a clause is provided to safeguard the application of the “old” rules for interventions facilitated pursuant to art. 119-ter Decree Law no. 34/2020 “started” before).
- ✓ **Law Decree no. 215 of 30 December 2023, Official Journal no. 303 of 30 December 2023 ([“Milleproroghe” Decree](#))**

Law Decree no. 215 of 30 December 2023 on urgent provisions on regulatory deadlines was published in the Official Journal no. 303 of 30 December 2023.

The main provisions introduced concern:

- (i) extension, also for 2024, of the prohibition to issue invoices in electronic format relating to healthcare services to final consumers (B2C); the prohibition applies to entities required to send the data to the “*Sistema Tessera Sanitaria*”, with reference to invoices whose data shall be sent to “*Sistema Tessera Sanitaria*” (art. 10-bis Law Decree no. 119/2018) and for entities that are not required to send the data, in respect to invoices relating to healthcare services provided to natural persons (art. 9-bis par. 2 Law Decree no. 135/2018);
- (ii) extension by one year of the deadlines for the notification of the acts of recovery referred to in art. 1 paragraphs 421, 422, 423 Law no. 311/2004 and in art. 1 paragraphs 31, 32, 33, 34, 35 and 36 Law no. 234/2021, expiring between 31 December 2023 and 30 June 2024, in order to ensure the recovery of the sums relating to State aid and *de minimis* aid not subject to the issue of concession orders or subject to the issue of concession orders or authorization to use the aid, however denominated, the amount of which cannot be determined in the aforesaid orders, but only following the presentation of the declaration made for tax purposes in which they are declared, for which the responsible authorities have not provided for the obligations to register the relevant aid schemes and *ad hoc* aid provided for by art. 10, par. 6 of the regulation referred to in Decree of the Minister of Economic Development no. 115 of 31 May 2017.

- ✓ **Law no. 206 of 27 December 2023, Official Journal no. 300 of 27 December 2023 - Organic Provisions for the Enhancement, Promotion and Protection of Made in Italy**

Law no. 206/2023 was published in the Official Journal no. 300 of 27 December 2023, on the organic provisions for the valorization, promotion and protection, in Italy and abroad, of “*Made in Italy*” products, i.e. the productions of excellence, the cultural heritage and the national cultural roots, for the growth of the national economy within the scope of and in coherence with the rules of the European Union's internal market.

The main provisions introduced concern:

- (i) establishment of the National Made in Italy Day;
- (ii) establishment of the National Made in Italy Fund, with an initial allocation of EUR 700 million for the year 2023 and EUR 300 million for the year 2024;

- (iii) support for female entrepreneurship;
- (iv) incentive measures for industrial property.

MINISTERIAL PRACTICE

CIRCULARS

- ✓ **Art. 1, par. 54, of Law no. 197 of 29 December 2022 (Budget Law 2023) - Amendments to the flat-rate regime ([Circular no. 32/E of 5 December 2023](#))**

With Circular no. 32/E of 5 December 2023, the Italian Tax Authorities provided further clarifications on the rules applicable to the flat-rate regime under Law no. 190/2014. In particular, the Italian Tax Authorities provides practical guidelines for the application of the new provisions introduced by art. 1, par. 54 of Law no. 197/2022, which:

- (i) raised the maximum threshold of revenues earned, or fees received, in the previous year for remaining in the regime from EUR 65,000 to EUR 85,000;
- (ii) introduced a new cause for immediate disqualification from the regime, which occurs as soon as EUR 100,000 threshold of revenues (or remuneration received) is exceeded.

REPLIES TO REQUESTS FOR ADVANCE TAX RULING

- ✓ **Transfer of a branch for the purposes of art. 2, par. 3, b) of Presidential Decree no. 633/1972 and for the purposes of other indirect taxes ([Reply to request for advance tax ruling no. 473 of 11 December 2023](#))**

The Italian Tax Authorities, in their reply to request no. 473 of 11 December 2023, confirmed that the assignment of a complex of assets (represented by an integrated water system including buildings and infrastructures) to shareholders (represented in this case by Municipalities) may qualify as a "transfer of business" provided that certain conditions are met, and therefore be not subject to VAT pursuant to art. 2, par. 3, b) of Presidential Decree no. 633/1972. In this case the transfer is subject to (i) registration tax in a fixed amount (EUR 200) pursuant to art. 4 of the Tariff, Part I, annexed to Presidential Decree no. 131/86, (ii) proportional cadastral tax (1%) on the value of the real estate and (iii) mortgage tax in a fixed amount (EUR 200) pursuant to art. 2 of the Tariff annexed to Presidential Decree no. 347/1990.

The Italian Tax Authorities recalled the key factors revealing the existence of a business can be identified in the "organization", the "assets" and "their purpose", i.e. "for the exercise of the enterprise". These elements shall be functionally linked by a relationship of instrumental complementarity such as to constitute a "*unicum*" intended for the exercise of the enterprise. Having said this, the Italian Tax Authorities clarify that, in the case under consideration, the fact that the management of the integrated water system has been entrusted under a concession for consideration to another operator, which in turn is entirely owned by the Local Authorities, does not preclude the qualification of the transaction as a transfer of business.

- ✓ **Special voluntary amendment - VAT group settlement - late submission of VAT refund/offsetting guarantee – Art. 1, paragraphs 174 to 178, Law no.**

197 of 29 December 2022 ([Reply to request for advance tax ruling no. 475 of 11 December 2023](#))

The Italian Tax Authorities, in their reply to request no. 475 of 11 December 2023, clarified that it is possible to take advantage of the “special voluntary amendment” in the event of non-compliance with group VAT settlement obligations, provided that the annual VAT return has been duly submitted.

In respect to the case at stake, in the event of omitted/ late submission of the asset guarantee by the parent company for VAT credit offsets, the Italian Tax Authorities have confirmed that it is possible to regularize the position by submitting late the guarantee required to legitimize the offsets performed within the group VAT settlement, paying the legal interest and the reduced penalty, also through the “special voluntary amendment” introduced by the Budget Law 2023 (art. 1, paragraphs 174 to 178, Law no. 197/2022).

- ✓ **VAT and direct tax treatment to be applied to the "recharging" of a commercial agent's electrically powered car ([Reply to request for advance tax ruling no. 477 of 15 December 2023](#))**

The Italian Tax Authorities, in their reply to request no. 477 of 15 December 2023, confirmed that the VAT rules applicable to the purchase and importation of motor vehicles, as well as to the costs related thereto, including those for the purchase of fuel, are applicable to all types of motor vehicles, including therefore also electrically powered cars and the electric energy component used to powering / charging them.

The reference is to the VAT deductibility regime pursuant to art. 19-*bis*1 Presidential Decree no. 633/1972.

- ✓ **Offsetting of social security and contribution debts against tax credits deriving from the measures listed in art. 121 of Law Decree no. 34/2020 – Art. 17 of Legislative Decree no. 241/1997 ([Reply to request for advance tax ruling no. 478 of 18 December 2023](#))**

The Italian Tax Authorities, in their reply to request no. 478 of 18 November 2023, the Italian Tax Authorities confirmed the possibility of offsetting construction tax credits pursuant to art. 121, Law Decree no. 34/2020 acquired by means of “credit assignment” with social security contributions due. Offsetting may take place in the F24 form between credits (including those of a subsidized nature acquired from third parties) and debts referring to different tax authorities, when these can be shown in the F24 form, unless an express prohibition to payment by offsetting has been provided for.

This reply is, moreover, in line with what has been clarified several times by administrative practice (Replies to request for advance tax ruling no. 435/2022, no. 394/2023, no. 395/2023).

- ✓ **Failure to exercise the right to deduct VAT - supplementary return – Art. 8, par. 6-*bis* of Presidential Decree no. 322/1998 ([Reply to request for advance tax ruling no. 479 of 18 December 2023](#))**

The Italian Tax Authorities, in the reply to request no. 479 of 18 December 2023, confirmed the possibility to file a supplementary return pursuant to art. 8, par. 6-*bis* of

Presidential Decree no. 322/1998 (no later than 31 December of the fifth year following the year in which the annual VAT return was filed pursuant to art. 57 of Presidential Decree no. 633/1972) in case that, due to a mere mistake, the taxpayer entitled to deduct has omitted to exercise the deduction in the annual VAT return, despite having received and registered the purchase invoice.

The Italian tax Authorities, thus guaranteeing the effectiveness of the right to deduct VAT and the principle of VAT neutrality, have recalled that the *dies a quo* from which the time limit for the exercise of the deduction starts shall be identified in the moment in which the purchaser / client fulfils the dual condition (i) of the tax becoming chargeable (substantial) and (ii) of the possession of a valid invoice (formal). This right may be exercised at the latest with the VAT return for the year in which both conditions are fulfilled.

- ✓ **Supplier's right to recover the additional VAT assessed – Art. 60, last paragraph, of Presidential Decree no. 633/1972 ([Reply to request for advance tax ruling no. 481 of 22 December 2023](#))**

The Italian Tax Authorities, in their reply to request no. 481 of 22 December 2023, clarified that the taxpayer (supplier) is entitled to claim the higher tax arising from notices of assessment or adjustment (pursuant to art. 60, last paragraph, Presidential Decree no. 633/1972) for its client (customer) also in cases the notice of assessment has been settled by means of the settlement procedures provided for by the law. Among which the ones pursuant to art. 6 et seq. of Legislative Decree no. 218/1997. The right may be exercised in relation to the payment of the tax definitively settled to and paid.

In the case at stake, the Italian Tax Authorities also confirmed that the buyer was to be identified in the incorporating company which, following a merger, had taken over all the rights and obligations of the merged company (original customer) pursuant to art. 2054-*bis* of the Italian Civil Code, continuing all its relationships, including those of a procedural nature, prior to the merger.

- ✓ **Split payment mechanism - VAT refund procedure – Art. 30-*ter*, par. 1 of Presidential Decree no. 633/1972 ([Reply to request for advance tax ruling no. 482 of 22 December 2023](#))**

The Italian Tax Authorities, in their reply to request no. 482 of 22 December 2023, examined the procedures for the recovery of the higher VAT paid by a municipality in relation to transactions subject to the split payment mechanism pursuant to art. 17-*ter* of Presidential Decree no. 633/72, against the subsequent stipulation of a settlement agreement to pay off its trade payables, in the absence of the issuance of a credit note by the supplier.

In this case, the Italian Tax Authorities confirmed the possibility of recovering the higher VAT paid by submitting a request for refund pursuant to art. 30-*ter* of Presidential Decree no. 633/1972, since the failure to issue the credit note within the deadline provided for by art. 26 par. 3 of Presidential Decree no. 633/72 is not due to the parties' culpable inertia, but to the parties' (settlement) agreements.

In the case at stake, the timing and conditions for entering into the settlement agreement were established by the procedure under Law no. 234/2021, so that the agreement could not be considered to have arisen out of full autonomy between the parties.

RESOLUTIONS

- ✓ **Special voluntary amendment - scope of application – Art. 21 of Law Decree no. 34 of 30 March 2023 - authentic interpretation of Art. 1, paragraphs 174 and 176, of Law no. 197 of 29 December 2022 - clarifications ([Italian Tax Authorities Resolution no. 67/E of 6 December 2023](#)).**

The Italian Tax Authorities, with Resolution no. 67/E of 6 December 2023, confirmed the possibility to take advantage of the institution of the special voluntary amendment for the regularization of violations consisting in the use of tax credits that are not due or do not exist, by means of the removal of the same and the payment of the penalties pursuant to art. 13, paragraphs 4 and 5 of Legislative Decree no. 471/1997, reduced to 1/18 on the assumption that the returns relating to the tax periods in which the violations were committed have been validly submitted.

The Italian Tax Authorities specify that violations committed in the tax period in progress as at 31 December 2021 and previous tax periods can benefit of the “special voluntary amendment” included in the regularization. On the other hand, violations concerning offsetting occurred after 31 December 2021 are excluded from the special rules.

- ✓ **Advance payment of the substitute tax on the revaluation of the severance pay fund – Art. 11, paragraph 4, of Legislative Decree no. 47 of 18 February 2000 ([Italian Tax Authorities Resolution no. 68/E of 7 December 2023](#))**

The Italian Tax Authority, with Resolution no. 68/E of 7 December 2023, clarified that the advance payment of the substitute tax on the revaluation of the termination indemnity fund, the payment of which was due on 18 December 2023, is to be calculated using the revaluation percentage determined on the basis of the increase in the ISTAT consumer price index for blue- and white-collar households recorded in December of the previous year. The advance payment may also be determined presumptively. In such a case, if the calculation of the advance payment proves to be insufficient with respect to the tax due, the insufficient payment will be subject to the penalty pursuant to art. 13 of Legislative Decree no. 471/1997, without prejudice to the possibility of spontaneously regularize the breach through the institute of the "voluntary amendment".

- ✓ **Capital gains deriving from the transfer of Italian real estate OICR units - scope of art. 5, par. 5-bis, of Legislative Decree no. 461 of 21 November 1997 ([Italian Tax Authorities Resolution no. 76/E of 22 December 2023](#))**

The Italian Tax Authorities, with Resolution no. 76/E of 22 December 2023, have clarified that capital gains realized on the sale of shareholdings in Italian real estate investment mutual funds by foreign investment undertakings, pension funds or other institutional investors established in countries belonging to the white list pursuant to Ministerial Decree of 9 September 1996 are excluded from taxation in Italy pursuant to art. 5, par. 5, of Legislative Decree no. 461/1997, even if the mutual fund is mainly invested in real estate located in Italy and has a corporate legal form.

In fact, art. 5, par. 5-bis of Legislative Decree No. 461/97, which denies the exemption for income deriving from the transfer of “shareholdings in companies and entities”, not traded on regulated markets, the value of which, for more than half, derives, directly or

indirectly, from real estate located in the territory of the State, does not apply to these cases.

✓ **Introduction of tax codes**

The Italian Tax Authorities have set up the following contribution causes for the payment (or offsetting), via F24 form, of the following taxes

- (i) contributions due to the Provincial Council of the Order of Labor Consultants of Florence ([Resolution 69/E of 13 December 2023](#));
- (ii) offset of the tax credit to support the catering sector, pursuant to art. 1, par. 117, Law no. 178/2020 ([Resolution 71/E of 19 December 2023](#));
- (iii) offset of the tax credit in favor of tourism enterprises, pursuant to art. 1 Law Decree no. 152/2021 ([Resolution 73/E of 20 December 2023](#));
- (iv) offset of the tax credit for the purchase of diesel fuel in favor of companies engaged in transport activities, pursuant to art. 1, par. 503, Law no. 197/2022 as amended by Law Decree no. 48/2023 ([Resolution 74/E of 20 December 2023](#));
- (v) contributions due to Inarcassa - the national welfare and assistance fund for engineers/architects and engineering companies ([Italian Tax Authorities Resolution no. 66/E of 4 December 2023](#)).
- (vi) payment, by form F24 *Versamenti con elementi identificativi* (F24 ELIDE), of penalties and interest from the repentance of tax liability relating to the substitute tax referred to in Art. 1, paragraphs 87 to 95, Law no. 197/2022 ([Resolution 70/E of 18 December 2023](#)).

PROVISIONS

- ✓ **Definition of the terms, methods and application procedures for the tax credit granted to merging banking foundations for cash disbursements made for the benefit of the operating territories of the merged foundations, which are in serious difficulty, provided for in the relevant merger plans, under art. 1, paragraph 396, of Law no. 197 of 29 December 2022. Procedures for the communication of the transfer of the credit referred to in art. 1, par. 399 of Law no. 197 of 29 December 2022 ([Italian Tax Authorities no. 2023/428485 of 18 December 2023](#)).**

With Provision no. 2023/428485 of 18 December 2023, the Italian Tax Authorities implement the provisions set forth in art. 1, par. 400 of Law no. 197/2022 by defining the terms, methods and application procedures for the use of the tax credit in favor of the foundations pursuant to Legislative Decree no. 153/1999.

The tax credit can be used exclusively by offsetting pursuant to art. 17 of Legislative Decree no. 241/1997, starting from the tax period in which it was recognized. As an alternative to the use of offsetting in the F24 form, the incorporating foundations that have obtained the recognition of the tax credit may assign the relevant credits, pursuant to art. 1, par. 399 of Law no. 197/2022, even partially, to banking, financial and insurance intermediaries, without the option of further assignment. The assignor must make a specific communication for the assignment of the tax credit.

The tax credit shall be reported in the tax return for the period in which the credit is recognized and in the tax returns for the subsequent tax periods in which the credit is utilized.

✓ **Irregular operation of Italian Tax Authorities' Office**

In several Provisions, the Italian Tax Authorities reported the failure or irregular operation of their offices. In particular:

- (i) [Provision no. 84689/2023 of 4 December 2023](#), non-operation of the Susa Territorial Office of Turin II Provincial Office on 17 November 2023.
- (ii) [Provision no. 2023/31007 of 5 December 2023](#), irregular functioning of the Chieti Provincial Office - Real Estate Advertising Services Area on 17 November 2023.
- (iii) [Provision no. 2023/31439 of 11 December 2023](#), irregular operation of the Provincial Office of Chieti - Territorial Office of Lanciano on 24 and 27 November 2023.
- (iv) [Provision no. 196829 of 11 December 2023](#), non-operation of the Real Estate, Land Registry and Taxation Services of the Brescia Provincial Office on 4 and 5 December 2023.

CASE LAW UPDATE

✓ **Time limit for the recovery of non-existent or undue credits (Supreme Court, Joint Sections, Judgment no. 34419 of 11 December 2023)**

The Supreme Court issued a principle of law on the offsetting of tax credits by the taxpayer, according to which the longer term of 8 years, allowed to the Tax Authorities challenge the offset, set forth in art. 27, par. 16, Law Decree no. 185/2008. Applies only in case the offset credit is non-existent, a condition that - in light also of art. 13, par. 5, third sentence, of Legislative Decree no. 471/1997, as amended by Legislative Decree no. 158/2015 - is fulfilled when the following requirements are jointly met: (i) the credit, in whole or in part, is the result of an artificial representation or lacks the constitutive prerequisites provided for by law or, although arising, is already extinguished at the time of its utilization; (ii) the non-existence cannot be ascertained by means of the controls pursuant to art. 36-*bis* and 36-*ter* of Presidential Decree no. 600/1973 and art. 54-*bis* of Presidential Decree no. 633/1972. Where the first requirement is fulfilled, but the non-existence is detected by formal or automated controls, the ordinary terms for the assessment activity apply.

✓ **Irregular offset of tax credits (Italian Supreme Court, Tax Section, Judgment no. 34806 of 12 December 2023)**

The Supreme Court stated that the irregular offset of a tax credit by omitting its indication in the tax return has the requirement of objective suitability to prejudice the exercise of control actions by the Italian Tax Authorities, since the correspondence between the credit offset and the taxpayer's actual entitlement is necessary, which excludes the merely formal nature of the breach, necessary to preclude the application of penalties.

- ✓ **Requalification as a “sale of business” of a sale of shares in favor of several transferees if based on elements intrinsic to the deed (Supreme Court, Tax Section, Judgment no. 34917 of 13 December 2023)**

The Supreme Court confirmed the approach recently affirmed (Supreme Court no. 10688/2021) on the interpretation of deeds, reaffirming that the qualification of the deed to be registered by way of interpretation is allowed only if performed *ab intrinseco*, without the use of external elements.

Therefore, the interpretation provided for by art. 20 of Presidential Decree no. 131/1986 cannot be based on the identification of contents other than those that can be deduced from the contract clauses and from the elements that can, in any event, be deduced from the individual deed submitted for registration.

- ✓ **Tax residence of foreign holding companies with administrative headquarters in Italy (Supreme Court, Judgment no. 35085 of 14 December 2023)**

The Supreme Court ruled that a company incorporated under the Luxembourg law, operating with its administrative headquarters in Italy, is considered an Italian tax resident entity pursuant to art. 73, par. 3, of the TUIR. In particular, the ruling emphasizes the substantive criterion of the location of the company’s administration, provided for by the domestic rules and the Conventions against double taxation.

Concerning the recognition of the tax credit for taxes paid abroad, once the Italian residence of the company has been established, the Court confirms that the deduction is not due in the event of failure to file the relative tax return or failure to indicate the income produced abroad in the tax return filed.

- ✓ **Taking on others’ debts – offsetting ban on (Supreme Court, Tax Section, Judgment no. 35094 of 14 December 2023)**

The Supreme Court has held that the voluntary assumption of the commitment to pay taxes on behalf of others (by taking on) does not result in becoming the taxpayer, but only result in all private obligation by virtue of the negotiated title. Considering the foregoing, there is no basis for the offset of the debt (pursuant to art. 17 of Legislative Decree no. 241/1997) with tax credits already owed, since the debts and credits of a tax or social security nature are not, *ex lege*, attributable to the same party.

- ✓ **Issuance of a credit note following the waiver of receivable (Supreme Court, Judgment no. 35518 of 19 December 2023)**

The Supreme Court has affirmed that the unilateral waiver of the credit towards an insolvency procedure entitles the supplier to issue the credit note. In this case, the VAT deduction cannot be exercised by the supplier, who must register the credit note issued by the supplier, and consequently loses the right to deduct the (unpaid) VAT.

The Court therefore recognized the right to issue the credit note also in the event of a unilateral waiver of the credit by a supplier towards a insolvency procedure, since the case is equivalent to the cases of termination, rescission, cancellation of the original contract, provided for in art. 26, par. 2 of Presidential Decree no. 633/72.

✓ **Exchange contracts with reciprocal services (Supreme Court, Judgment no. 35685 of 21 December 2023)**

The Supreme Court has held that in exchange contracts (also if including shareholdings), the imbalance of the economic value of the service exchanged cannot lead to the nullity of the transaction for lack of cause, since the principle of negotiating autonomy prevails in the Italian legal system, which also operates with reference to the determination of the reciprocal performances.

Only if a worthless, merely apparent and symbolic price is fixed can the sale be null and void for lack of one of its essential requirements, but, on the contrary, the stipulation of a price significantly lower than the market value of the thing sold only poses a problem concerning the adequacy and correspondence of the contracting parties' performance. In this regard, the Supreme Court has specified that a price which, although equal to zero or close to zero, refers to a transaction that is onerous in relation to the assumption by the purchaser, at the same time or by means of connected acts, of obligations connected with the right acquired cannot be considered merely apparent or symbolic. Reference is made, in particular, to the case, recurring in the present case, of the acquisition of corporate shareholdings which impose on the holder further financial contributions, with penalty of a reduction to zero of the value of those shareholdings.

✓ **Postponement of the deadline for offsetting building bonuses to the first working day (Modena Tax Court of First Instance, Judgment no. 334 of 19 October 2023)**

The Tax Court of First Instance of Modena confirmed that the postponement of the deadline for the use of building bonuses for offsetting purposes to the first working day is legitimate if the deadline falls on a Saturdays or Sundays, even if the first working day falls in a subsequent calendar year (and therefore the use of the credit takes place after 31 December).

EUROPEAN UNION

✓ **Principle of proportionality of customs penalties (EU Court of Justice 23 November 2023, Case C-653/22)**

The EU Court of Justice has held that, on the basis of the principle of proportionality laid down in art. 42 of EU Regulation 952/2013 (the Union Customs Code), in the event of a loss of revenue from customs duties due to the provision of inaccurate information in a customs declaration, national legislation may provide for an administrative fine corresponding, in principle, to 50% of such loss of revenue notwithstanding the good faith of the trader concerned and the precautions taken by him.

The EU Court of Justice provides that the application of the 50% administrative fine is possible where that rate is significantly lower than in the case of bad faith on the part of the trader and significantly reduced in certain situations specified in that legislation, including where the good faith supplier trader rectifies his customs declaration before the conclusion of the post-clearance check.

- ✓ **Application of art. 107 and 108 of the Treaty on the Functioning of the European Union to “*de minimis* aid” ([Regulation \(EU\) no. 2023/2831 of 13 December 2023](#))**

The EU Regulation no. 2831 of 13 December 2023, which will replace the current EU Regulation no. 1407/2013 as of 1 January 2024, has been published in the Official Journal of the European Union L Series of 15 December 2023. The new Regulation will be applied until 31 December 2030.

Among the main news, art. 3 of the new Regulation states that the total amount of “*de minimis* aid” granted by a Member State to a “single enterprise” that does not exceed EUR 300,000 over a period of three years is not subject to the notification requirement.

- ✓ **[EU Delegated Directive No. 2023/2775 of 17 October 2023](#)**

The EU Delegated Directive no. 2023/2775 of the European Commission of 17 October 2023 amending Directive no. 2013/34/EU of the European Parliament and of the Council regarding the adjustments of the size criteria for determining the categories “micro-enterprises” and “small, medium-sized and large enterprises or groups” was published in the Official Journal of the European Union L Series of 21 December 2023.

Member States will have to comply with the Directive by 24 December 2024 and will have to communicate to the Commission the text of the provisions to be applied for financial years starting on or after 1 January 2024.

OTHER

- ✓ **[Note Ministry of Enterprise and Made in Italy no. 383421 of 20 December 2023.](#)**

In its Note No. 383421 of 20 December 2023, the Ministry of Business and Made in Italy confirmed also for 2024 the amounts of the annual fee to the Chambers of Commerce already set for the previous year.

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