FIVELEX
STUDIO LEGALE E TRIBUTARIO

Tax | Update

February 2024

Summary

REGULATORY UPDATE

✓ **Provisions on tax assessment and two-year composition with creditors (Legislative Decree no. 13/2024)**

On 21 February 2024, Legislative Decree no. 13/2024 on tax assessment and two-year composition with creditors was published in Official Journal no. 43, implementing the Enabling Law for the reform of the tax system. The Decree came into effect on 22 February 2024.
The most relevant features are the following:

- the discipline of the two-year composition with creditors is introduced, which is aimed at rationalizing reporting obligations and encouraging spontaneous compliance for smaller taxpayers, holders of business income and self-employment income from the exercise of arts and professions carrying out activities in the territory of the State;
- the Italian Tax Authorities will have to make available to taxpayers by 15 June 2024 the appropriate computer applications to enter the data for the processing of the arrangement proposal, while adherence by taxpayers to the proposal can take place by 15 October 2024, the date when VAT holders will have to file their tax returns. Thus, more extended timeframes have been provided than those contained in the draft Decree;
- the taxpayer's participation in the assessment procedure will be strengthened. In fact, in line with the amendments made to the Statute of Taxpayers' Rights, in the adhesion procedure, the outline of the measure will be communicated to the taxpayer for the purpose of the prior cross-examination provided for in the new Art. 6-bis, paragraph 3 of the Statute of Taxpayers' Rights and must contain, in addition to the invitation to make observations, the invitation to submit an application for the settlement of the assessment with adhesion, instead of observations;
- it is possible for the taxpayer to adhere to the assessment reports;
- it is also specified that adherence will result in the reduction of penalties to 1/6 of the minimum and presupposes full acceptance of the findings made by the verifiers.

✓ **Law no. 17 of 22 February 2024, converting Decree Law no. 212 of 29 December 2023, a Decree on "Tax breaks in construction" (Official Journal no. 48 of 27 February 2024)**

Law no. 17 of 22 February 2024, converting Decree Law no. 212 of 29 December 2023, the "Building Tax Benefits" Decree, was published in Official Journal no. 48 of 27 February 2024. In particular, the exceptions to the prohibition of credit assignment in cases of demolition and reconstruction of buildings have been revised, and new features have been introduced for the tax deduction provided for the elimination of architectural barriers.

✓ **Law no. 18 of 23 February 2024, converting Decree Law no. 215/2023 (the "Milleproroghe") (Official Journal no. 49, 28 February 2024)**

Law no. 18/2024, converting Decree Law no. 215/2023 on urgent provisions regarding regulatory deadlines (the "Milleproroghe"), effective from 29 February 2024, was published in the Official Journal as General Series no. 49 of 28 February 2024. Among the main fiscal changes there is the reopening of the terms for the facilitated definition of the "*rottamazione-quater*. It is provided that failure to pay, insufficient or late payment of the installments that were due in 2023 (thus 31 October and 30 November 30, 2023, deadlines already slipped to 18 December 2023) and of the installment due on 28 February 2024 does not cause the definition to lapse, if the debtor makes full payment of the missing installments by 15 March 2024. It is provided a five-day grace period, so payment is considered timely if made by Wednesday, 20 March 2024. The Decree also opens a window for special amends for irregularities concerning returns filed for the 2022 tax period. In fact, the possibility that had been provided by the Budget Law 2023 for tax returns up to tax year 2021 (Art. 1, paragraphs 174 to 178 of Law no. 197/2022) is extended to violations on validly filed returns relating to the tax period in progress as of 31 December 2022. The payment of the amounts due must be made by 31 March 2024.

Decree of 8 February 2024 Ministry of Economy and Finance - Determination of deadlines for transmission on a semi-annual basis of health expenditure data to the Health Card System. (Official Journal no. 41, 19 February 2024)

The Ministry of Economy and Finance (“MEF”) Decree of 8 February 2024, published in Official Journal no. 41, 19 February 2024, provides the six-monthly frequency of compliance. According to the amendments, the submission must be made by 30 September for healthcare expenses incurred in the first half of the same year and by 31 January, starting in 2025, for healthcare expenses incurred in the second half of the previous year. Thus, the monthly data submission that had been established, with effect from 2024, by the Ministerial Decree of 19 October 2020, has been superseded. The new cadence was ordered in implementation of the Legislative Decree "Adempimenti" (Art. 12, Legislative Decree no. 1/2024), which provided for the semi-annual sending of data, deferring to a MEF decree to set the deadlines.

MINISTERIAL PRACTICE

REPLIES TO REQUESTS FOR ADVANCE TAX RULING

- ✓ **Refund of the excess payment made as an advance payment of the substitute tax referred to in Art. 5 of Legislative Decree 461/1997 (Reply to request for advance tax ruling no. 28 of 2 February 2024)**

In their answer to request for advance tax ruling no. 28 of 2 February 2024, the Italian Tax Authorities clarify that the refund of the excess payment made as an advance payment of the substitute tax under Art. 6 of Legislative Decree no. 461/97 by the transferee of the credit who does not perform securities administration and custody services is allowed.
Decree Law 133/2013 has stipulated that intermediaries applying the substitute tax under consideration are required to pay an amount, as an advance payment, equal to 100 percent of the total amount of payments due in the first eleven months of the year, by

16 December of each year. This provision does not specify what happens to any excess of the advance payment over the substitute tax due in the following year. In this case, the excess tax was acquired because of the sale of a business unit to a person who never offered custodial and administrative services. This circumstance does not allow the advance payment to be offset against payments for the same substitute tax. Therefore, this response admits the possibility of submitting to the competent office of the Italian Tax Authorities a special request for reimbursement of the credit that was indicated in the 770 form (withholding tax return).

- ✓ **Acquisition or increase of shareholdings in subsidiaries already belonging to the group (Reply to request for advance tax ruling no. 33 of 8 February 2024).**

The Italian Tax Authorities, in their answer to request for advance tax ruling no. 33 of 8 February 2024, clarified that the reduction of the ACE (notional interest deduction on equity increase) base for the purchase of shareholdings in subsidiaries already belonging to the group (Art. 10 co. 3 lett. a) of Ministerial Decree of 3 August 2017) does not operate where the transferor company, beneficiary of the cash consideration, is not part of the group.
In the case examined, the acquiring company already owned 60,5 percent of the shares of a subsidiary and acquired the remaining 39,5 percent from non-group third parties.
In such situations, the ACE base remains unaffected, since what is relevant for the purposes of the reduction is not the fact of already holding the controlling interest, but that whereby the increase in the share held occurs with the acquisition from another entity in the group (a circumstance not verified in this case).

- ✓ **Demerger transaction followed by the simultaneous merger of the demerged company into the beneficiary (Reply to request for advance tax ruling no. 37, 8 February 2024) .**

In their reply to request for advance tax ruling no. 37 of 8 February 2024, the Italian Tax Authorities respond to a question proposed by a multinational group which is represented in Italy by several companies, whose reorganization is precisely the focus of the question on abuse of law. The proposed transaction consists in the partial demerger of one of the companies of the group, by transferring shareholdings and subsequently merging by incorporation into the beneficiary. Thus, it is a matter of streamlining the group by concentrating almost all activities under one company, resorting to tax-neutral operations. The Tax Administration pointed out that the petitioner correctly observed that "the partial demerger in favor of a shareholder of the demerged company is in fact assimilated to a merger of the beneficiary company (already a shareholder of the demerged company) with ‘a part’ of the demerged company," referring to the Illustrative report to Art. 10-bis of Law 212/2000. This consideration helps initiate favorable judgment of the entire operation, which represents for the Italian Tax Authorities a legitimate alternative to the normally more tax burdensome assignment regime.

- ✓ **Declaratory procedures to be adopted to take advantage of the benefit from the "Patent Box" after the agreement with the Italian Tax Authorities (Reply to request for advance tax ruling no. 39 of Feb. 9, 2024)**

The Italian Tax Authorities in their reply to request for advance tax ruling no. 39 of 9 February 2024, confirmed that the taxpayer cannot recover the unused benefit in relation to tax periods for which the deadlines for filing supplementary favorable returns have expired (Art. 2 of Presidential Decree no. 322/98 and Art. 43 of Presidential Decree 600/73).
In the case at hand, a company in 2018 had entered into a ruling agreement with the Italian Tax Authorities for the direct use of intangible assets with respect to tax periods 2015 to 2019. However, although it could recover the benefit already with its annual return for 2018, it had remained inert and had not filed any supplementary return.

- ✓ **Tax realignment option - Change of the choice made in the declaration - Remission *in bonis* (Reply to request for advance tax ruling no. 42 of 9 February 2024)**

The Italian Tax Authorities, in their reply to request for advance tax ruling no. 42 of 9 February 2024, ruled out the possibility of benefiting from the institution of remission in *bonis* to change the choice of revaluation or realignment through substitute taxation that was indicated in the RQ section of the Income Form.
In particular, the applicant company intended to adhere to the revaluation of business assets under Law 160/2019, however, having proceeded:

- to the payment via F24 form of the tax with tax code 1126, corresponding to the substitute tax under Art. 176 co. 2-ter of the Income Taxes Consolidated Text;
- to the submission of the Income 2020 form by filling out Section VI-A of the RQ framework for tax realignment under Art. 176 of the Income Taxes Consolidated Text.

The Italian Tax Authorities have clarified that the option exercise for the revaluation of business assets is to be considered completed with the disclosure in the income tax return of the increased revalued values and the related substitute tax. For the purposes of the completion of the revaluation option, therefore, the correct completion of the RQ box in the annual return in which the option is exercised is relevant. Hence, it is believed that the reprimand under Art. 13 of Legislative Decree 472/97 is not applicable, as this institution cannot be used to change choices or correct errors or omissions made in application of optional regimes. The Italian Tax Authorities confirmed that it is also not possible to use the "remission *in bonis*" referred to in Art. 2 co. 1 of Decree Law 16/2012.

- ✓ **Spin-off - Art. 173 of TUIR - tax benefits - tax credits of the spin-off - allocation - criteria (Reply to request for advance tax ruling no. 48 of 22 February 2024)**

In their reply to request for advance tax ruling no. 48 dated 22 February 2024, the Italian Tax Authorities clarified that in the case of a demerger, tax credits for research and development activities, for non-energy enterprises and for advertising investments are not among the "subjective positions" referred to in Art. 173 co. 4 of the Income Taxes Consolidated Text; these credits, therefore, can be subject to allocation, in the demerger project, according to the will of the parties.
With particular reference to the tax credit for research and development under Art. 3 of Decree Law 145/2023, the Tax Authorities state that since there is no provision aimed at redetermining or limiting the tax credit in question and the credit is precisely quantified and due, it cannot be considered as falling under "subjective positions" since it

represents an autonomous element of the assets of the demerger that, as such, is eligible to be allocated, in the demerger project, according to the will of the parties. The same considerations, according to the Italian Tax Authorities, are also applicable to tax credits for non-energy companies, advertising investments, benefit companies and sanitization.

- ✓ **Flat-rate scheme - transfer of residence in Italy - end of employment relationship with foreign employer - start of self-employment relationship with the same employer - exceeding threshold of 30,000 euros in the previous year - non-applicability (Reply to request for advance tax ruling no. 50 of 22 February 2024)**

In their reply to request for advance tax ruling no. 50 of 22 February 2024, the Italian Tax Authorities expressed its opinion on the flat-rate scheme under Art. 1, paragraphs 54-89, of Law no. 190/2014. According to the Tax Authorities, this regime can be used by the natural person resident for tax purposes in an EU state who, following the end of the relationship with the foreign employer, moves to Italy in 2024, acquiring Italian tax residence, and starts a new self-employment activity having the previous foreign employer as a client as well.
In this case, the cause of exclusion set forth in Art. 1 co. 57 lett. *d-bis* of L. 190/2014 is not applicable since there is no criteria for linking the employment income received abroad with the territory of the State and the conditions for achieving the purpose that the obstructive cause intends to pursue, namely the artificial transformation of the previous relationship into another for which the facilitated regime can be enjoyed, do not exist. Nor is the other cause of exclusion provided for in sub-paragraph *d-ter of* Art. 1 co. 57 of L. 190/2014 recognizable since, in the case at hand, the employment relationship abroad ended in 2023, while the activity under the facilitated regime would start in 2024.

- ✓ **VAT group - incorporation of an entity outside the group - reporting requirements for the period before incorporation (Reply to request for advance tax ruling no. 52 of 22 February 2024)**

In their reply to request for advance tax ruling no. 50 of 22 February 2024, the Italian Tax Authorities clarified that if a participant in a VAT group incorporates companies outside the group, the obligation to file the VAT return on behalf of the merged companies falls on the incorporating company, with reference to the part of the tax year prior to the extraordinary transaction. In such case, the incorporating company is required to file the return on behalf of the outside incorporated company, indicating the transactions carried out by the incorporated company up to the effective date of the extraordinary transaction and reporting:

- in the part reserved for the taxpayer, the data of the incorporated entity.
- in the box reserved for the declarant, the data of the incorporating party, indicating the value "9" as the in charge code;

The results of individual annual returns cannot be transferred to the group, as the incorporated companies are external entities. Therefore, any debts will have to be settled separately, and any credit balance will have to be claimed for refund.

✓ **"Rottamazione *quater*" - installment payments - suspension of roles disapplication of the prohibition of offsetting pursuant to Art. 31, co. 1, of Decree Law no. 78 of 2010 (Reply to request for advance tax ruling no. 54 of 22 February 2024)**

The Italian Tax Authorities with their reply to request for advance tax ruling no. 53 of 28 February 2024 clarified that the submission of the application for the scrapping of the roles makes the debtor compliant, therefore, the prohibition of offsetting in the presence of overdue roles under Art. 31 of Decree Law no. 78/2010 does not operate. This concerns only the loads subject to the application for scrapping, which do not count toward the 1,500 euro threshold.

RESOLUTIONS

✓ **New tax codes**

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

(i) stamp duty substitute tax on reports involving crypto assets (Resolution 10/E of 6 February 2024);
(ii) substitute tax on personal income tax and regional and municipal surcharges applied by the taxpayer when filing the income tax return (Resolution 11/E of 6 February 2024);
(iii) tax credit for companies that purchase recycled products or compostable or recycled packaging (Resolution 12/E of 20 February 2024);

PROVISIONS

✓ **Extension of the deadline for sending option communications under Art. 121 of Decree Law no. 34 of 19 May 2020 (Italian Tax Authorities provision no. 53159/2024 of 21 February 2024).**

With provision no. 53159/2024 of 21 February 2024, the Italian Tax Authorities extended the deadline for reporting options under Art. 121 of Decree Law no. 34 of 2020, which provided that for building interventions that entitle to the Superbonus referred to in Art. 119 of the same Decree, as well as for some of the traditional ones listed in co. 2 of the same Art. 121, the beneficiary may opt, instead of direct use of the deduction in his or her tax return, for an advance contribution in the form of a rebate from the suppliers who carried out the interventions or, alternatively, for the assignment of the credit corresponding to the deduction due.

✓ **Approval of Form 770/2024, covering tax year 2023, with instructions for compilation, concerning data on payments, credits and compensations (Italian Tax Authorities provision no. 61647/2024 of Feb. 26, 2024)**

With provision no. 61647/2024 of Feb. 26, 2024, the Italian tax Authorities approved Form 770/2024 (withholding tax return) for tax year 2023, with instructions for its compiling, to be used to report data on withholdings made in the year 2023 and related payments, as well as withholdings made on dividends, participation income, capital

gains or transactions of a financial nature and payments made by withholding agents. The 770/2024 form is used to indicate the offsets made as well as to indicate the tax credits used and data relating the amounts settled as a result of third-party foreclosure procedures.

- ✓ **Approval of the declaration form "Income 2024-PF", with instructions, to be submitted by individuals in the year 2024, for the tax period 2023, for income tax purposes. (Italian Tax Authorities provision no. 68687/2024 of February 28, 2024)**

With provision no. 68687/2024 of 28 February 2024, the Italian Tax Authorities approved the "Income 2024-PF" (personal income tax return) form, with instructions, attached to the provision, to be submitted by individuals in the year 2024, for the tax year 2023.

- ✓ **Approval of the declaration form "Income 2024-SC," with related instructions, to be submitted in the year 2024 by companies and business entities residing in the territory of the State and nonresident entities treated as such for income tax purposes. (Italian Tax Authorities provision no. 68514/2024 of 28 February 2024)**

With provision no. 68514/2024 of 28 February 2024, the Italian tax Authorities approved the "Income 2024-SC" (corporate income tax return) form to be submitted in the year 2024 by companies and business entities residing in the territory of the state and non-resident entities treated as such, along with the relevant instructions for compilation and general instructions to the "Income 2024 of Companies and Entities" forms for the tax year 2023.

- ✓ **Approval of the declaration form "National and World Group Taxation 2024" (Italian Tax Authorities provision no. 68702/2024 of Feb. 28, 2024)**

With provision no. 68702/2024 of Feb. 28, 2024, the Italian Tax Authorities approved the "Domestic and World Group Taxation 2024" form, to be submitted in the year 2024 for the purpose of declaration of entities eligible for group taxation of resident subsidiaries as well as entities eligible for determination of the single tax base for the group of nonresident enterprises, with the relevant instructions for the compiling, attached to the provision itself, for the tax year 2023.

- ✓ **Approval of the declaration form "Irap 2024" declaration form, with instructions, to be submitted in the year 2024 for the purpose of regional tax on productive activities (Irap). (Italian Tax Authorities provision no. 68659/2024 of 28 February 2024)**

With provision no. 68659/2024 of 28 February 2024, the Italian Tax Authorities approved the "Irap 2024" (regional tax return) form, to be submitted in the year 2024 for the purpose of regional business tax, with instructions for its compilation, attached to the provision, for the tax year 2023.

CIRCULARS

✓ **Implementation of the first form of personal income tax reform and other measures on income tax - Legislative Decree no. 216 of 30 December 2023 (Circular no. 2/E of February 6, 2024)**

With Circular no. 2/E dated 6 February 2024, the Italian Tax Authorities provided clarifications regarding the Irpef (personal income tax) reform for 2024, pursuant to Legislative Decree 216/2023. In relation to the changes to the "supplementary remuneration treatment" introduced by Art. 1 co. 3 of Legislative Decree 216/2023, it was clarified that the 75-euro reduction in tax deductions applies only to the amount referred to in Art. 13 co. 1 lett. a) first sentence of the TUIR, and not also to the amounts referred to in the second and third sentences of the same lett. a).
The Circular explains that, regarding tax deductions and the "salary supplement," the total income is assumed net of the income derived from the real estate unit used as the principal residence and its appurtenances referred to in Art. 10 co. 3-bis of the TUIR, and that, in calculating the total income to be used for determining the benefits (so-called reference income), it must also be taken into account:

- income subject to dry rent coupon and substitute tax in application of the flat-rate regime under Law 190/2014;
- the share of the ACE subsidy (notional interest deduction on net equity increase), referred to in Art. 1 of Decree Law 201/2011.

In fact, although Art. 5 of Legislative Decree 216/2023 repealed the ACE as of the tax period following the one in progress as of 31 December 2023, if the amount of the notional return exceeds net comprehensive income, the excess can be carried over to subsequent tax periods without any quantitative or temporal limitation, until its effects are exhausted.

✓ **Main changes in indirect taxes contained in Law no. 213 of 30 December 2023 (Budget Law 2024), Decree Law no. 145 of 18 October 2023 (Anticipation Decree), and Decree Law no. 69 of 13 June 2023 (Save-infractions Decree) (Circular no. 3/E of Feb. 16, 2024)**

Italian Tax Authorities' Circular no. 3/E dated 16 February 2024 provided initial clarifications in relation to the regulatory changes introduced by the Budget Law 2024 (Law 213/2023), the Anticipation Decree (Decree Law 145/2023) and the Save-infraction Decree" (Decree Law 69/2023), regarding VAT, IVAFE (tax on financial assets abroad) and registration tax.
With reference to the VAT changes introduced by the Budget Law 2024 (Law 213/2023):

- the threshold corresponding to the minimum amount to benefit from VAT relief in relation to goods sold to non-EU travelers according to the rules of the so-called "VAT Relief has been lowered from €154.94 to €70.00", according to the so-called tax-free shopping regime provided for by Article 38-quarter of Presidential Decree 633/72;
- VAT rates have been raised for certain baby and female hygiene products, including baby nappies, absorbent feminine hygiene products and powdered milk for infant or young adult feed;
- the 10 percent rate for pellet supplies has been extended to the months of January and February 2024, and from March 1, 2024, the ordinary VAT rate becomes applicable again;

Regarding the registration tax, it has been reminded that:

- since the deadline for adapting the statutes of sports entities to the changes introduced by the sports reform has been extended to 30 June 30, 2024, the deadline by which the aforementioned changes in statutes are exempt from registration tax has also been extended to 30 June 2024;
- following the elimination of any reference to citizenship from the rule on the "first home" benefit (note II-bis to art. 1 of the Tariff, part I, annexed to Presidential Decree 131/86), it is provided that (from 14 June 2023) the purchaser transferred abroad for work reasons, who has resided or carried out his or her business in Italy for at least five years, can access the first home benefit provided that the property purchased is located "in the municipality of birth or in the municipality of in which he had his residence or carried out his activity before the transfer", specifying that the five-year period may not be consecutive and the employment relationship (even if not subordinate).

CASE LAW UPDATE

✓ **Clearance of registration tax - Injunction order - Principle of non-dispersion of evidence - Electronic file (Supreme Court, Decision no. 3005, 1 February 2024)**

The Supreme Court, in judgment no. 3005 of 1 February 2024, clarified that in tax proceedings handled, since the first instance, according to telematic methods, the parties are not required to re-file on appeal the productions from the party file of the first instance, which remain acquired to the telematic file *ex officio* and must necessarily be examined by the appeal judge.
In fact, the transmission by the Provincial Tax Commission of the electronic file to the competent Regional Tax Commission takes place through the S.I.GI.T., with the established technical operational methods aimed at ensuring its certain date as well as its integrity, authenticity and confidentiality. Therefore, the party documents in the telematic file at first instance are definitively acquired to the office file and must be taken into consideration by the judge even if the party fails to re-file them.

✓ **ASD advertising expenses - Art. 90, paragraph 8, Law no. 289/2002 - Tax deductions (Supreme Court, Decision no. 3479, 7 February 2024)**

The Supreme Court has stated that the peculiar regime contained in Art. 90, paragraph 8, of Law no. 289/2002, by virtue of its facilitative nature, establishes an absolute presumption of inherence and adequacy of sponsorships rendered in favor of amateur sports associations where the indicated requirements are met, i.e., that the fees paid are intended for the promotion of the image or products of the disbursing entity and a specific activity of the beneficiary of the disbursement is found, and consequently allows such expenses to be deemed fully deductible by the sponsoring entity.
In fact, the legislator has established an absolute presumption of cost deductibility, making the entrepreneur's choice to promote the name, brand or image through advertising initiatives in the amateur sports sector unquestionable; one cannot, therefore, deny the deductibility of sponsorship costs on the basis of an alleged absence of a direct expectation of a commercial return, since such a solution would not even be in line with the very notion of inherence, as outlined over time, which is qualitative and not quantitative

in nature and is no longer based on the necessary traceability of the charge to the perception of revenues by the enterprise incurring the cost.

- ✓ **Municipal property tax (IMU) (Supreme Court, Decision no. 3094, 2 February 2024)**

The Supreme Court, in its judgment no. of 2 February 2024, clarified that the IMU (municipal property tax) exemption from 1 January 2014, provided by Art. 5, co.6, of Legislative Decree no. 504 of 1992, of buildings constructed and intended for sale by the construction company, as long as this destination remains and they are not in any case rented out, must be excluded for the building purchased by the company, even though the commercial circulation of the asset is preordained to a subsequent construction activity.

- ✓ **Real estate fund - Contribution of real estate - Subject to proportional registration tax - Exclusion (Supreme Court, Judgment no. 3218, 5 February 2024).**

The Supreme Court, in its ruling no. 3218 of 5 February 2024, clarified that it is incorrect to apply the 9% registration tax stipulated for real estate transfers to the contribution of real estate to the real estate investment fund.
In fact, Art. 9 co. 1 of Decree Law 351/2001 (which excludes the obligation of registration with possible application of the fixed tax in case of registration) remains applicable to this case, since the abolition of exemptions and facilitations provided for, for real estate transfer deeds, by Art. 10 co. 4 of Decree Law 23/2011, had no effect on the taxation regime of deeds of contribution to real estate investment funds.

- ✓ **Double notification of assessment - Possibility to challenge - Conditions (Supreme Court, Decision no. 4510, 20 February 2024)**

The Supreme Court has reiterated that where the same tax act is served twice and separate appeals follow against each act, in order to determine the fate of it, it is necessary to ascertain whether the second service was made to remedy (or not) the invalidity of the first act. Thus, if the second act remedied the defect of the first act served, it is the second act that produces the effect of the addressee's knowledge of the act, with the consequent starting point of the *dies a quo of* the time limit for appeal from the service of the second act. On the other hand, in cases where the second service was not made to remedy the invalidity of the first act and occurred later than 60 days from the first, the appeal that the addressee has nevertheless brought is inadmissible due to lateness, since the latter has had full and effective knowledge of it since the first act.

- ✓ **Contingent assets in the context of the determination of business income (Supreme Court, Decision no. 4666, 21 February 2024)**

The Supreme Court in its judgment no. 4666 of 21 February 2024, on the subject of the determination of business income, upheld the appeal of the Tax Authorities, which claimed that the costs, which emerged against invoices to be received in previous years and were deducted by the company, had in fact become totally nonexistent, since the invoicing of the services was temporally so delayed with respect to the performance of

the services, that the costs themselves had to be considered fictitiously indicated. Thus, the contingent asset has to be resumed to taxation and it is supported both by the failure to invoice for a long time the costs indicated in previous tax periods and by the failure to produce invoices or proof of payments.

- ✓ **Municipal property tax (IMU) - Payment on real estate instrumental to business activity (Constitutional Court, Decision no. 21, 20 February 2024)**

The Constitutional Court has made clear that Ires (corporate tax) and Irap (regional tax) are two different taxes in nature and substance, and, consequently, the fact that the total nondeducibility of municipal tax from Ires was illegitimate, does not entail the same problem in the fact of regional tax on productive activities (Irap). On these grounds, the questions of legitimacy raised on the subject are unfounded.

EUROPEAN UNION

- ✓ **VAT exemption of intra-Community supplies (EU Court of Justice, Section X, 29 February 2024, Case C-676/22)**

The EU Court of Justice , in its judgment of 29 February 2024, Case C-676/2022, ruled that Art. 138 paragraph 1 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the exemption from value added tax of a supplier established in one Member State, having supplied goods to another Member State, must be refused where that supplier has not shown that the goods were supplied to a recipient having the status of a taxable person in that Member State and that, in the light of the factual circumstances and evidence provided by the supplier, the information necessary to verify that the recipient had that status is lacking.

- ✓ **Common system of value added tax (VAT) - Directive 2006/112/EC- Derogation provided for in Art. 90, paragraph 2 - Limitation period regarding applications for a subsequent reduction in the taxable amount of VAT - (EU Court of Justice, Section X, 29 February 2024, Case C- 314/22)**

The EU Court of Justice, in its judgment of 29 February 2024 in Case C-314/22, ruled that Art. 90 of the VAT Directive (2006/112/EC), read in conjunction with the principles of fiscal neutrality, proportionality and effectiveness, must be interpreted as not precluding legislation of a Member State which provides for a limitation period to apply for a value added tax (VAT) refund resulting from a reduction in the taxable amount of VAT in the event of total or partial non-payment, the expiry of which results in penalizing an insufficiently diligent taxable person, provided that that limitation period only begins to run from the date on which that taxable person was able, without showing a lack of diligence, to assert its right to a reduction. In the absence of national provisions concerning the rules governing the exercise of that right, the starting point for such a limitation period must be identifiable by the taxable person with a reasonable degree of probability.

OTHER

- ✓ **Press release of the Ministry of Business and *Made in Italy* of 26 February 2024 on introduction of "Transition 5.0 Plan" (Mimit press release of 26 February 2024)**

After the approval of the D.L. PNRR by the Council of Ministers on 26 February 2024, the Ministry of Business and Made in Italy have announced, through a press release, the introduction of the new "Transition 5.0 Plan" for the two-year period 2024 and 2025, which aims to incentivize the green and digital transformation of companies through a new tax credit for investments in tangible and intangible capital assets. Companies will be eligible for an automatic tax credit, without prior assessment and regardless of company size, business sector or location. The condition is that the investments in tangible and intangible assets made must result in a reduction in energy consumption of the production unit of at least 3 percent, which rises to 5 percent if calculated on the process affected by the investment.
Investments in new capital assets necessary for self-production of energy from renewable sources and expenditures for targeted staff training will also be eligible. The tax credit will be usable by offsetting, in a single installment, by submitting the F24 form. The excess not offset by 31 December 2025 will be offsetable in 5 equal annual installments.

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