FIVELEX
STUDIO LEGALE E TRIBUTARIO

Tax | Update

March 2024

Summary

UPDATE ON REGULATION

- ✓ **Interventions to support the competitiveness of capital "DDL Capital converted into Law" (Law No. 21 of 5 March 2024)**

With the introduction of Law No. 21 of 5 March 2024 (the "**Capital Law**"), the legislature intervened with the aim of supporting the competitiveness of capital and implementing an organic reform of capital market provisions.

The main changes introduced by the Capital Law are the following:

(i) news on SMEs:
   a. extension of the definition of listed SMEs;
   b. provision of a specific procedure for the dematerialization of ltd-SME shares;
(ii) Simplifications in listing procedures;
(iii) elimination of the obligation to report transactions carried out by controlling shareholders holding 10% or more of the capital;
(iv) possibility for the outgoing Board of Directors of joint-stock companies to submit a list of candidates for the election of members of the same board, subject to certain conditions;
(v) innovations to the regime for investment companies with variable capital ("**SICAVs**") and investment companies with fixed capital ("**SICAFs**"). The innovations introduced relate mainly to:
   a. the easiest way of establishment of externally managed SICAFs and SICAVs, now assimilated to the one of funds in contractual form;
   b. confirmation of the asset segregation regime of sub-funds of the same SICAV or SICAF;
   c. clarity on the procedure for handling insolvency situations; and
   d. management continuity;
(vi) News on Consob sanctions;
(vii) doubling of the asset limit for popular banks, above which there is an obligation to transform them into joint-stock companies (from Euro 8 billion to Euro 16 billion).

- ✓ **Urgent measures on tax benefits "Law Decree Tax Benefits" (Law Decree No. 39 of 29 March 2024)**

With the introduction of Law Decree No. 39 of 29 March 2024 (the **"Law Decree Tax Incentives"**), the legislature intervened about tax credits for building interventions and other tax incentives. The Law Decree Tax Incentives came into force on 30 March 2024.

The new features introduced by the Tax Relief Law Decree are the following:

(i) the extension of the "*blocking"* of options for the assignment of the tax credits in respect of the deduction due or for the so-called "*rebate on consideration*";
(ii) the preclusion of "*remission in bonis"* in relation to "*building"* option communications, which had to be made by 4 April 2024;

(iii) the introduction of an obligation to report the amount of expenses incurred in 2024 and 2025 relating to seismic risk reduction or energy requalification interventions facilitated by the superbonus;
(iv) the prohibition of offsetting tax credits for "*building* incentives" in the presence of overdue roles exceeding Euro 10.000;
(v) limitations on the assignment of tax credits related to the so-called "*super ACE*";
(vi) the introduction of a prior communication for the purpose of using the tax credit for investments in 4.0 assets as compensation in the F24 form;
(vii) the reopening of the deadline for adhering to the special tax amnesty (deadline postponed to 31 May 2024);
(viii) changes to the prohibition of offsetting in case of overdue roles exceeding Euro 100.000, applicable from 1 July 2024;
(ix) the starting date of the new preventive cross-examination. Article 7, par.1, of the law decree Tax Benefits ("*Decreto Legge Agevolazioni Fiscali")* provides that the amendments on preventive cross-examination will apply to acts issued as of 30 April 2024.

MINISTERIAL PRACTICE

REPLIES TO REQUESTS FOR ADVANCE TAX RULING

- ✓ **Productivity bonuses - inapplicability of the preferential treatment in the absence of incremental business objectives (Reply to the request for advance tax ruling No. 59 of 5 March 2024)**

The Italian Tax Authorities, with their reply to request No. 59 of 5 March 2024, clarified that, for the purposes of the application of the substitute tax on performance incentives pursuant to Art. 1, par. 182 et seq. of Law no. 208/2015, the following conditions must concurrently exist:

(i) the achievement of the targets is linked to the payment of the bonus;
(ii) an incremental value with respect to the previous year is measured and verified.

For the bonuses and amounts paid in the years 2023 and 2024, the substitute tax rate, referred to in par. 182, is reduced from 10% to 5%, as provided by Art. 1, par. 63, Law No. 197/2022 (the "**Budget Law 2023"**) and by Art. 1, par. 18, Law No. 213/2023 (the "**Budget Law 2024**").

If both of the above conditions are not met, the preferential tax regime cannot be applied.

- ✓ **Fiscal treatment, for the purposes of VAT and registration tax, applicable to assignment transactions involving certain dwellings defined as "*social" to* a municipality and to leasing transactions involving the same dwellings performed by the same municipality (Reply to the request to the advance tax ruling No. 60 of 5 March 2024)**

The Italian Tax Authorities, in the reply to the request No. 60 of 5 March 2024, ruled on the issue of VAT deductibility on the purchase of social housing, i.e. permanently rented

residential units that perform a function of general interest in order to reduce the housing hardship of disadvantaged individuals and that are cadastrally classified as residential property.

Specifically, the Italian Tax Authorities stated:

(i) the non-deductibility of the VAT, pursuant to Art. 19-*bis,* par. 1, letter i) of Presidential Decree No. 633/1972 (the "**VAT Decree**"), paid upon purchase, recovery and management, as the derogation to the non-deductibility regime recognised in the past for VAT charged on the purchase of property classified as residential and intended for a hospitality business is not applicable (see Resolution no. 18/E/2012);
(ii) the impossibility of being able to benefit from the reduced 4% "first home" rate (since the purchaser, which is the Municipality, is an entity other than a natural person);
(iii) the possibility of opting for VAT at the rate of 10% as provided for in No. 127-*duodicies*) of Table A, Part III, annexed to the VAT Decree.

- ✓ **Asseveration "*Sisma bonus*" - Remission in bonis (Reply to the request for advance tax ruling No. 64 of 8 March 2024)**

The Italian Tax Authorities, with the answer to the request No. 64 of 8 March 2024, provided clarifications on the effects of not submitting the asseveration of the effectiveness of interventions for the reduction of seismic risk (the "**Asseveration *Sisma bonus***") on time.

In the case at hand, a condominium is carrying out condominium building works falling within the 110% *super sisma bonus* relief. The petitioner specifies that the filing of the Asseveration *Sisma bonus*, not only took place after the date of commencement of works, but even the penalty for remission *in bonis* of the Asseveration *Sisma bonus* was settled on a date subsequent to the date of submission of the notice of option for the discount on the invoice pursuant to Art. 121, par. 7 of Law Decree No. 34 of 19 May 2020.

According to the Italian Tax Authorities, in such a case, it is possible to make use of the provisions of Art. 25 of Law Decree No. 104 of 10 August 2023, converted with amendments by the Law of 9 October 2023, according to which "*in the hypotheses in which the credits not yet used, deriving from the exercise of the options referred to in Art. 121, par. 1, letters a) and b), of Law Decree No. 34 of 19 May 2020, [...] the last transferee is required to notify the Italian Tax Authorities of this circumstance within thirty days of becoming aware of the event that determined the non-usability of the credit*." From the moment in which the communication stating the intention not to use the credit is accepted, effectively rendering the assignment ineffective, it is deemed that the petitioner may, subsequently proceed with the assignment of the credits, which, for effect, will be subsequent to the regularization of the late asseveration.

- ✓ **VAT - conditions for reimbursement (Reply to the request for advance tax ruling No. 66 of 11 March 2024)**

The Italian Tax Authorities, with the reply to the request No. 66 of 11 March 2024, provided clarifications on the person entitled to submit a refund application under Art. *30-ter* of the VAT Decree.

In the case at hand, a company, after having received an assessment on the different qualification of the relationship from a "*contract for services*", subject to VAT, to a "*labour supply contract*", not subject to VAT, repaid the amounts assessed as "*non-deductible*". Not being able to receive from the supplier, subject to insolvency proceedings, any VAT credit note or refund of the VAT paid at the time, the petitioner asked the Italian Tax Authorities to be allowed to submit a direct claim for VAT refund, within two years of the event which duplicated the tax.

According to the Italian Tax Authorities, the request for VAT refund can only be made by the supplier, within the time limit of two years from the return of the VAT to the purchaser, while for the latter, the only solution is to claim the refund of the tax from the supplier by resorting to civil law instruments.

- ✓ **Assessment - Reduction of time limits - Non-applicability to the VAT group (Reply to the request for advance tax ruling No. 69 of 12 March 2024)**

The Italian Tax Authorities, with the answer to Request No. 69 of 12 March 2024, provided clarifications on the applicability of the reduction of assessment terms recognised to entities that use traceable instruments for collections and payments exceeding €500 pursuant to Art. 3 of Legislative Decree no. 127/2015.

The Italian Tax Authorities excluded the applicability of the discipline to the VAT group and its members on the basis of the following two considerations:

(i) the applicability of Art. 3 of Legislative Decree No. 127/2015 is excluded at root because the members of the VAT group cannot be considered "*taxable persons*" considering that the status of VAT taxable person is assumed by the group itself;
(ii) the institution of the VAT group: (a) has no relevance for income tax purposes; (b) makes no declaration for the participants in the VAT Group; and (c) would have no legitimacy in manifesting any will of the members in this respect.

- ✓ **Accounting errors - correction - OIC adopter - tax relevance - derivation Art. 83 of the Income Tax Consolidation Act - negative component - limits to deductibility - IRES - relevance for IRAP purposes - effects for ACE purposes (Reply to the request for advance tax ruling No. 73 of 21 March 2024)**

The Italian Tax Authorities, with the answer to Request No. 73 of 21 March 2024, provided clarifications on the rules on the correction of accounting errors applicable to entities that adopt the enhanced derivation principle and submit their financial statements to statutory audit as from the 2022 tax period.

Specifically, this discipline:

(i) applies to accounting errors corrected in 2022 and relating to income components attributable to previous years;
(ii) refers to errors that can be qualified as such by accounting standards, regardless of their "relevance" (and, therefore, to both relevant and non-relevant errors), whereas it does not apply to errors that are the consequence of the incorrect application of tax rules;
(iii) determines the relevance for IRES purposes of the corrective items in the year in which the correction is made, while it does not affect the nature of the income component (thus, the rules limiting or reducing the tax relevance of negative income components, which are deductible for the amount that would have been deductible in the tax period in which the error was made, continue to apply).

In the case at hand:

(i) the interest expenses implicit in the lease payments subject to correction are deductible for IRES purposes taking into account the limitations set forth in Art. 96 of Presidential Decree No. 917 of 22 December 1986 (**"Income Tax Consolidation Act"**);
(ii) corrective items are not relevant for ACE purposes.

- ✓ **Superbonus - possibility to benefit from par. *10-bis of* Art. 119 of Law Decree No. 34/2020 (Relaunch Decree) for an ONLUS (Reply to the request for advance tax ruling No. 75 of 21 March 2024)**

With their reply to the Request no. 75 of 21 March 2024, the Italian Tax Authorities provided clarifications on the possibility for voluntary organizations (VOs) and social promotion associations (SPA) to benefit from the so-called "enhanced" "Superbonus" relief provided for by Art. 119, par. *8-ter* and *10-bis* of Law Decree No. 34/2020 (the "**Relaunch Decree**"). In order to access the "enhanced" *Superbonus,* it is necessary, among other things, that the aforementioned entities carry out "*activities for the provision of social, health and welfare services*".

The petitioner clarifies that the property subject to the intervention will be used to carry out a "*social housing"* activity, which will take the form of the rental, at subsidised rents, of housing services in favour of disadvantaged persons. The Italian Tax Authorities denied the possibility of benefiting from the subsidy *Superbonus* because the social housing activity does not qualify as an assistance activity falling within the "*social and socio-medical assistance*" sector governed by Art. 10, par. 1, letter a) of Legislative Decree No. 460/1997.

- ✓ **Suspensive condition (Reply to the request for advance tax ruling No. 78 of 22 March 2024)**

The Italian Tax Authorities, with their answer to the Request No. 78 of 22 March 2024, stated that the trademark transfer contract in which the transfer of ownership is subject

to the condition of the full payment of the price by a certain date, is subject to proportional registration tax at a rate of 3% (pursuant to Art. 9 of the Tariff Part I, annexed to Presidential Decree No. 131/1986) already at the time of registration.

The condition attached to the contract must be qualified as merely potestative condition and, therefore, Art. 27, par. 3 of Presidential Decree 131/1986 applies, which, in the case of a sale subject to reservation of title (Art. 1523 of the Civil Code) or of a deed subject to a condition that makes its effects depend on the mere will of the purchaser, requires the application of registration tax as if the condition had not been attached.

- ✓ **Tax treatment of primary urbanization works. Preferential VAT rate of 10% applicable to an urban road (Reply to the request for advance tax ruling No. 80 of 25 March 2024)**

In their reply to the Request No. 20 of 25 March 2024, the Italian Tax Authorities commented on the tax treatment of primary urbanization works, and in particular on the preferential regime with a 10% VAT rate provided by the combined provisions of numbers *127-quinquies* and *127-septies* of Table A, Part III, annexed to the VAT Decree.

In the case at hand, the requesting Municipality asked the Italian Tax Authorities for clarifications on the correct application of the VAT rate to the construction "*ex novo*", by means of a contract, of works on an "*urban slip road*" and, in particular, on the correctness of the application of the facilitated regime with a VAT rate of 10% referred to above.

The Italian Tax Authorities, in a favourable opinion, affirmed that the "*ex novo*" realization of a building intervention on an urban slip road, aimed at the infrastructural enhancement of the same, falls among the primary urbanisation works that may benefit from the reduced VAT rate since, the preferential regime is applicable to an urban slip road and applies, *inter alia*, to the "*primary and secondary urbanisation works listed in Art. 4 of Law no. 847 of 29 September 1964, supplemented by Art. 44 of Law no. 865 of 22 October 1971".*

- ✓ **Fiscal treatment for the purposes of registration, mortgage and cadastral taxes applicable to a "Universal Transfer of Assets" transaction under foreign law involving the transfer of ownership of real estate in Italy (Reply to the request for advance tax ruling No. 81 of 28 March 2024)**

With their reply to the Request No. 81 of 28 March 2024, the Italian Tax Authorities stated that, in the event that, as a result of the institution under French law known as the "*Transmission Universelle de Patrimoine*" (the "**TUP**"), a French company owning real estate on Italian territory is dissolved and its entire assets are automatically transferred to the Italian parent company i.e.(so-called "*dissolution*" in the French *Code Civil*), the following applies:

(i) registration tax at a proportional rate of 9% pursuant to Art. 1 of the Tariff Part I annexed to Presidential Decree No. 131/1986, calculated on the current value of the real estate located in Italy that is transferred;

(ii) mortgage and cadastral taxes in the fixed amount of Euro 50 each pursuant to Art. 30, par. 3 of Legislative Decree No. 23/2011.

In the case at hand, the petitioner had pointed out to the Italian Tax Authorities the similarity between the TUP operation, which under French law takes place automatically without the need for any liquidation operations, and the extraordinary merger operation, hoping for a neutral attitude on the part of the Italian Tax Authorities. The latter took a contrary view, which did not accept the solution put forward by the petitioner, stating that a merger is a phenomenon that cannot be compared with a TUP and that, therefore, the tax rules applicable to the transfer of assets resulting from a TUP must be applied to the transfer of assets to shareholders.

- ✓ **Third Party Litigation Funding - VAT Treatment (Reply to the request for advance tax ruling No. 83 of 28 March 2024)**

In their reply to the Request No. 83 of 28 March 2024, the Italian Tax Authorities commented on the VAT treatment of "*Third Party Litigation Funding*" transactions.

In particular, the Italian Tax Authorities established that the services provided by the petitioner company in the transactions of "*Third Party Litigation Funding" are* of a financial nature and, if they had territorial relevance in Italy, would be exempt from VAT pursuant to Art. 10, par. 1, letter n), of the VAT Decree. In addition, it was specified that, about invoicing requirements, since these are exempt services, Art. 22, paragraph 1 of the VAT Decree must be applied, according to which the issuance of an invoice is not mandatory, unless requested by the client, and this must take place no later than the time the transaction is performed for VAT-exempt transactions.

- ✓ **Merger and simultaneous asymmetrical full demerger - single-member beneficiary companies - maintenance of the same assets as pre-merger companies (Reply to the request for advance tax ruling No. 84 of 29 March 2024)**

The Italian Tax Authorities, in their reply to the Request No. 84 of 29 March 2024, ruled on the existence of abuse of rights pursuant to Art. *10-bis* of Law no. 212/2000. The case at hand concerns three property management companies (which own three plots of land of equal value) and are equally owned by three members of the same family nucleus. Due to their different views on the development of the business, the partners in the application present their wish to separate, each one becoming the exclusive owner of a company and through it of a real estate lot. To achieve this, the chosen path is the merger of the three companies, followed by an asymmetrical split.

With reference to the elements that, according to the Italian Tax Authorities, constitute a relevant transaction for the purposes of the abuse of rights rules, the following is reported:

(i) Undue tax advantage: the Italian Tax Authorities notes that each of the three final beneficiary companies will dispose of the same real estate assets as the three original companies, being wholly owned by one of the shareholders.

Merger and demerger transactions are characterised by the principle of tax neutrality. In principle, the fact of carrying out transactions in order to take advantage of their tax neutrality does not in itself constitute abuse of law, but the two transactions are carried out, in the present case, with the purpose of assigning to the three newly created beneficiary companies the same real estate assets that were originally held by Alfa, Beta and Gamma respectively, continuing the real estate management activity previously carried out. The Italian Tax Authorities, therefore, considered that the same objective could be achieved by means of (realizable) shareholding disposals, whereas it was achieved by means of two operations aimed at re-proposing the *status quo ante*, but separating the destinies of the shareholders. The two opposing operations (merger and then demerger) are therefore in the interests of the shareholders, not the companies, and the resulting tax advantage is undue in that the operations circumvent sales of participations taxed *pursuant to* Art. 67 of the TUIR.

(ii) Economic substance: the Italian Tax Authorities observed that there was a lack of economic substance to the transaction as some companies had been created by previous demergers, only to be reunited by a merger, and separated again by three asymmetrical full demergers. For the Italian Tax Authorities, this could have been more simply achieved by means of share transfer transactions.

(iii) Absence of valid non-marginal *extra-fiscal* reasons: for the Italian Tax Authorities, no such reasons existed since no other reasons other than the attainment of a tax advantage were put forward; the objectives could have been achieved in another, more appropriate, way.

RESOLUTIONS

- ✓ **Deadline for tax withholding agents to submit the Single Tax Certifications (CU) for income from self-employed work carried out on a regular basis ("*professional*") (Italian Tax Authorities Resolution No. 13/E of 4 March 2024).**

With Resolution No. 13/E dated 4 March 2024, the Italian Tax Authorities provided clarifications regarding the timing for tax withholding agents to submit the Income Tax Statement (so called "*Certificazioni Uniche*", **"CUs"**) from "professional" self-employment, i.e. habitually exercised.

The Italian Tax Authorities have reiterated that although the general deadline for the transmission of CUs is 16 March of the year following the year in which the income is paid, CUs containing only exempt income or income that cannot be declared by means of the pre-filled declaration can also be sent for 2024 by the deadline for the submission of the tax withholding agent declaration (the Form 770), i.e. by 31 October 2024.

Starting with CUs relating to tax year 2024:

(i) the information in CUs containing income that can only be declared with the REDDITI PF form will be routinely used for the preparation of the pre-filled declaration;

(ii) the submission of all certifications containing income declarable through the 730 form or through the REDDITI PF form (including income from "professional" self-employment) must be made by 16 March of the year following the year in which the sums and values were paid.

- ✓ **Deduction due for the purchase of earthquake-resistant houses - Completion of structural works on the building before the deed of sale is signed (Italian Tax Authorities Resolution No. 14/E of 8 March 2024)**

With Resolution no. 14 of 8 March 2024, the Italian tax Authorities clarified that the so-called *Sisma bonus* purchases (governed by Art. 16 par. *1-septies* of Law Decree No. 63/2013), also applies to real estate units classified in one of the provisional cadastral categories (e.g. F/3) that are part of buildings that have been demolished and reconstructed (located within the areas classified as being at seismic risk 1, 2 and 3) on which, by the date the deed of sale is stipulated (which must take place by 31 December 2024), work on the structural parts has been completed.

The Italian Tax Authorities highlight the following requirements to be met in order to benefit from the tax relief:

(i) the demolition and reconstruction of the building must lead to a reduction of one or two seismic risk classes, certified in accordance with Art. 3, Ministerial Decree No. 58/2017;
(ii) the deed of sale must be concluded within the period of validity of the relief.

- ✓ **Establishment of the tax code for the payment, by means of F24 and F24 "public entities" (F24 EP), of the autonomous local property tax (ILIA) relating to buildings for residential use, other than the main dwelling or assimilated and additional to the first (Italian Tax Authorities Resolution No. 16/E of 12 March 2024)**

By note No. 0115669 of 21 February 2024, the autonomous Region of Friuli Venezia Giulia requested the setting up of the tax code for the payment of the ILIA (tax replacing the IMU for the autonomous Region of Friuli Venezia Giulia) relating to buildings for residential use other than the main dwelling or assimilated and in addition to the first, and the renaming of the tax code "5901" as "*ILIA - autonomous local property tax for buildings for residential use, other than the main dwelling or assimilated - Law autonomous Region of Friuli Venezia Giulia No.17 of 14 November 2022*".

Therefore, in order to allow the payment, by means of the F24 and F24 EP forms, the Italian Tax Authorities have established the tax code "5902" called "*ILIA - autonomous local property tax for buildings for residential use, other than the main dwelling or assimilated and additional to the first - Law autonomous Region of Friuli Venezia Giulia No. 17, Art. 9, par. 3 of 14 November 2022.*

When completing the F24 EP form, the aforementioned tax code is shown in section "ILIA" (value 9), in correspondence with the amounts indicated exclusively in the column "*debit amounts paid*".

In addition, the tax code "5901" has been renamed as "*ILIA - autonomous local property tax for the first building for residential use, other than the main dwelling or assimilated – Law Autonomous Region of Friuli Venezia Giulia No. 17, Art. 9, par. 2 of 14 November 2022".*

The indications on how to fill in contained in Resolution No. 10/E of 24 February 2023 remain unaffected.

ORDERS

- ✓ **Amendments to the order on the issuing and receiving of electronic invoices for the supplies of goods and services performed between persons resident or established in the territory of the State (Order No. 105669/2024 of 8 March 2024)**

With Order No. 105669 of 8 March 2024, the Italian Tax Authorities introduced, as of 20 March 2024, the possibility for all taxpayers (i.e. not only final consumers, as provided by Law Decree No. 145/2023, but all VAT taxpayers) to make use of the service for consulting and acquiring electronic invoices and their electronic duplicates more easily, without the need to sign a service agreement.

The Italian Tax Authorities also state that:

(i) electronic invoice files may be stored until 31 December of the eighth year following the year in which the reference declaration was submitted or until the settlement of any judgments, for control purposes;
(ii) the possibility for non-commercial entities to register, as is already the case for VAT taxable persons, a telematic address (PEC or recipient code) at which electronic invoices can be received;
(iii) the final consumer may not delegate access to the consultation service to an intermediary.

- ✓ **Amendment of the information to be transmitted for the communication of VAT periodic settlement data under Art. *21-bis* of Decree-Law No 78 of 31 May 2010, and subsequent amendments (Order No. 125654/2024 of 14 March 2024)**

With Order No. 125654 of 14 March 2024, the Italian Tax Authorities amended some of the information contained in the periodic VAT settlement (LIPE) communication form. In particular, the threshold for the minimum periodic VAT payment has been updated, which, by Legislative Decree No. 1/2024, has been raised from Euro 25.82 to Euro 100.00. Moreover, the wording of line VP10 has been changed from "*EU car payments*" to "*F24 car payments identification elements*".

CIRCULARS

- ✓ **News on employee income (Circular No. 5/E of 7 March 2024)**

In their Circular No. 5/E of 7 March 2024, the Italian Tax Authorities provided the first clarifications on the changes introduced on the subject of employee income by the Budget Law 2024 and law Decree No. 145/2023, in particular on the new fringe benefit rules.

One of the main new features is the possibility of facilitating, through direct disbursement or reimbursement of sums, rent or interest expenses on the mortgage on one's first home. In this respect, the Italian Tax Authorities clarified that:

(i) reference must be made to the notion of "*principal dwelling*", already provided for in respect of deductions (Arts. 15, par. 1, letter b) and 16 of the Income Tax Consolidation Act), which considers "*the place where the taxpayer or his family members habitually reside*";
(ii) with regard to rental expenses, the rent resulting from the lease agreement duly registered and paid during the year is relevant;
(iii) the employer must acquire and retain the relevant documentation or, alternatively, a declaration in lieu of affidavit.

- ✓ **Rejection of credit assignments subsequent to the first one already accepted (Circular No. 6/E of 8 March 2024)**

Circular No. 6/E of 8 March 2024 of the Italian Tax Authorities provides clarifications on the procedure to be followed in the event of a rejection of credit assignments subsequent to the one already accepted, in accordance with Art. 121 of the Relaunch Decree.

The Circular addresses the issue of the cancellation of assignments of receivables accepted in error by the assignee subsequent to the first one, in the event that:

(i) the assignment was accepted in error by the assignee, who, instead, intended to reject it;
(ii) the assignor and the assignee, after acceptance of the assignment by the latter, intend to cancel the notice of assignment of the claim made on the "*Assignment Platform*".

It is emphasized in the Circular that the Italian tax Authorities are not involved in the private relationship between assignor and assignee and can only intervene at the request of the parties concerned. Accordingly, in such circumstances, the assignor and assignee must submit a formal request to the Italian Tax Authorities for the "*rejection*" of the already accepted assignment of the credit, following the instructions provided in the Circular and using the form attached to it.

CASE LAW UPDATE

- ✓ **Transfer of property to a foreign company - Fixed-rate tax - Conditions - Foreign registered office – Relocation abroad - Exclusion (Supreme Court, Judgment No. 5924 of 5 March 2024)**

In its judgment No. 5924, filed on 5 March 2024, the Supreme Court ruled on the recognition of the foreign residence of a company with its head office in the territory of the State (i.e., the place where the management and administration of the business activity is actually carried out and from which the relevant decisions emanate) that locates its tax residence abroad for the sole purpose of benefiting from more advantageous tax legislation.

In the case at hand, the appellant had received liquidation notices contesting the application of registration tax at a fixed rate in respect of a transfer of property in exchange for shares in a company, based in London. The Italian Tax Authorities claimed the application of registration tax at a proportional rate, on the basis of the assumption that the company should not be qualified as an English company, but as an Italian one, recognizing in this case the occurrence of a hypothesis of fictitious residence.

The Supreme Court has clarified that the recognition of an abusive practice occurs when the mechanism put in place by the company:

(i) results in the obtaining of a tax advantage, the granting of which would be contrary to the objective pursued by the rules; and
(ii) it appears from a set of objective elements that the essential purpose of the transaction is limited to obtaining that tax advantage.

Regarding the burden of proof of relocation abroad, the Court ruled that the burden of proof is on the Italian Tax Authorities, which, however, is allowed to discharge it by means of a favourable presumption in the presence of certain indicators, with the consequent burden on the taxpayer to overcome such presumption. In the case at hand, the Supreme Court held that the Italian tax Authorities had proved that the company's registered office in London was only fictitious and aimed at obtaining an undue tax advantage, as no actual connection between the company and the foreign country was found.

The mere formal domicile as a registered office in another state does not entail the applicability of fixed registration tax, if there is no effective seat and no economic activity whatsoever in that other state.

- ✓ **The mechanism of habitual exportation alters the ordinary rule (Supreme Court, Judgment No. 5778 of 4 March 2024)**

In Judgment No. 5778, filed on 4 March 2024, the Supreme Court ruled on the deductibility of VAT by the habitual exporter. The Court ruled that the mechanism of habitual exportation alters the ordinary rule, which is affected by Art. 60 of the VAT Decree, in the sense that, in the event of expropriation, the taxable person is identified as the

transferee since he is the one who must pay the VAT instead of the supplier. This circumstance gives rise to a VAT credit, which the taxpayer may then deduct, carry forward in excess or request a refund.

In the case at hand, the appellant company, which qualified as a habitual exporter under Art. 8, letter c) of the VAT Decree, had been served a notice of assessment stating an offence of purchasing or importing goods and services without paying tax in the absence of the conditions for using the available VAT *plafond.* The company, after having paid the tax and penalties, had filed a claim for reimbursement of the tax paid in order to exercise the right to deduct it pursuant to Art. 60, par. 7 of the VAT Decree. The taxpayer's refund application was followed by a silent refusal by the Italian Tax Authorities, which the taxpayer appealed against.

The Supreme Court clarified that in the event of exceeding the plafond limit, the taxable person is entitled to a refund of the tax paid to the Treasury for purchases in suspension of taxation beyond the *plafond*, highlighting that this conclusion responds to the fundamental principle of neutrality of taxation for all economic activities (according to which the producer of goods must not be affected by a consumption tax that by its very nature must be borne only by the final consumer).

EUROPEAN UNION

- ✓ **Principles of VAT neutrality and proportionality preclude national legislation (EU Court of Justice, section VII, No. C-341/22 of 7 March 2024)**

In its judgment filed on 7 March 2024, Case C-341/2022, the EU Court of Justice ruled that Art.s 9 and 167 of Directive 2006/112/EC (the "**VAT Directive**") do not allow denying the status of taxable person and the right to deduct VAT when the amount of the transactions carried out, relevant for tax purposes, does not reach the threshold established by a national law on the basis of the assets at the person's disposal (i.e. Italian regulations on shell companies).

The case examined concerns a company, which was denied by the Italian tax Authorities the right to deduct VAT paid on purchases in 2009. For three consecutive tax periods (2006, 2007 and 2008), in fact, this entity had carried out VAT-relevant transactions for an amount lower than the amount below which companies are considered 'non-operational'.

It should be noted that for VAT purposes, 30, par. 4 of Law No. 724/1994 precludes companies considered to be shell companies:

(i) the reimbursement of the VAT credit, its set-off in the F24 form or its assignment to third parties, to companies that are "shell companies" for the tax period in respect of which the credit is shown in the declaration;
(ii) the offsetting of VAT credit also against the VAT debt of subsequent periodic settlements to shell companies that for three consecutive tax periods do not carry out

VAT-relevant transactions for an amount at least equal to the minimum presumed revenue.

The EU Court of Justice found the provision to be incompatible with the VAT Directive in two respects:

(i) first, because of incompatibility with the notions of "*VAT liability*" and "*economic activity*" (Art. 9 of the VAT Directive); and
(ii) secondly, for incompatibility with the right to deduct (Art. 167 of the VAT Directive) and the principle of neutrality.

- ✓ **Reference for a preliminary ruling - Taxation – Added Value tax (VAT) (EU Supreme Court, section VII, No. C-606/22 of 21 March 2024)**

In its judgment in Case C-606/2022, filed on 21 March 2024, the Court of Justice of the EU ruled that the Italian tax Authorities may not refuse to refund overcharged VAT solely on the ground that the taxable person did not document the relevant transactions with an invoice, having issued receipts by means of a cash register.

An exception is the case where the tax authority itself objects unjust enrichment of the taxable person, showing that the economic burden resulting from the unduly levied tax has been fully neutralized.

The case concerned a Polish trader who, in accordance with the interpretation initially upheld by the Polish Tax Authorities, had applied a VAT rate of 23% (instead of the reduced rate) to the services rendered. As the reduced rate of 8% applied, the Polish trader claimed back the overcharged tax by correcting the VAT returns submitted.

This refund was denied on the grounds that Polish law provided for the possibility of adjusting taxable income and VAT through the corresponding amendment of an originally issued invoice, which was not the case here.

The EU Court of Justice held that the refusal of refund was contrary to the principles of effectiveness and equal treatment. In particular, with reference to the latter, the application of a higher rate than that adopted by competitors, without the possibility of its recovery, could have led to a reduction in the profit margin if the taxable person had wanted to maintain competitive prices.

ASSONIME

- ✓ **Circular 5/2024 - The new regulations on *de minimis* State aid and *de minimis* aid for services of general economic interest**

Circular No. 5 of 2024 outlines the European Commission's new regulations on *de minimis* State aid, which is exempt from State aid control because it is deemed to have no impact on competition and trade between Member States.

The *de minimis* Regulation No. 2023/2831 and the Regulation on *de minimis* aid for undertakings providing services of general economic interest (SGEI) No. 2023/2832

replace the previous regulations that expired on 31 December 2023 and will apply until the end of 2030.

The main novelty of the two regulations is the increase in the aid maximum limit per single enterprise, which currently allows companies to benefit from a maximum limit of Euro 300.000 for *de minimis* aid under the general regulation and Euro 750.000 for *de minimis* SGEI aid over three years.

In addition, the way in which the aid maximum limits are calculated, the scope of application and the transparency requirements were amended, also aligning the two regulations more closely.

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For information: info@5lex.it