FIVERS

Tax Update

May 2024

Summary

UPDATE ON REGULATION

✓ Implementing Decree on Single SEZ Tax Credit (Official Journal No. 117 of 21 May 2024)

On 17 May 2024, the implementing decree concerning the Single SEZ tax credit was signed, adopted by the Minister for European Affairs, the South, Cohesion Policies and the NRP, in collaboration with the Ministry of Economy and Finance, and published in the Official Journal No. 117 of 21 May 2024 (the "**Implementing Decree**"). The Implementing Decree establishes the procedures for accessing the tax credit, the criteria and methods for its application and use, and the necessary controls to ensure compliance with the expenditure limit set at EUR 1,800 million for 2024.
Companies wishing to benefit from the Single ZES tax credit must notify the Italian Tax Authorities, from 12 June to 12 July 2024, of the amount of eligible expenses incurred from 1 January 2024 and those planned until 15 November 2024.

Beneficiaries

Article 16 of the Implementing Decree states that the Single SEZ tax credit can be claimed by companies that purchase capital goods intended for production facilities located in the regions of Basilicata, Calabria, Campania, Molise, Puglia, Sardinia, Sicily and in specific assisted areas of the Abruzzo region.
As regards the beneficiaries of the Single SEZ tax credit, the Implementing Decree clarifies that all companies, regardless of their legal form and the accounting regime adopted, both those already operating and those setting up ex novo in the Single SEZ, are eligible for the tax credit.

Eligible investments

Eligible investments are investments, forming part of an initial investment project as defined in Article 2, points 49, 50 and 51, of Commission Regulation (EU) no. Commission Regulation (EU) No 651/2014 of 17 June 2014, made between 1 January 2024 and 15 November 2024, concerning the purchase, including through leasing contracts, of new machinery, plant and various equipment intended for already existing or newly created production structures in the Single SEZ, as well as the purchase of land and the acquisition, construction or extension of real estate instrumental to the investments and actually used for the exercise of the activity in the production structure referred to in Article 2, paragraph 1.

Goods intended independently for sale, as well as those processed or assembled to obtain goods for sale and consumables are excluded.

Investments in capital real estate are eligible even if they relate to assets already used by the transferor or other entities for the performance of an economic activity, in accordance with the provisions of Articles 2(49), (50) and (51) and 14 of Regulation (EU) No. 651/2014 of 17 June 2014.

Modalities of use

The decree emphasises that the tax credit can be used exclusively by offsetting, pursuant to Article 17 of Legislative Decree No. 241 of 9 July 1997, by submitting the F24 form exclusively through the telematic services made available by the Italian Tax Authorities, under penalty of rejection of the payment transaction, starting from the working day following the publication of the Italian Tax Authorities' order and not before the date of realisation of the investment.

- ✓ ***Global minimum tax*: implementing provisions for simplified transitional regimes (Ministerial Decree 20 May 2024)**

The Finance Department of the Ministry of Economy and Finance published the Decree of 20 May 2024 on simplified transitional regimes for multinational and domestic groups subject to *global minimum tax* rules.

The global minimum tax, introduced by EU Council Directive 2022/2523, applies from the fiscal year 2024 to all multinational groups with a total turnover of at least EUR 750 million. The rate of the *global minimum tax is* 15% of net profit and applies to the parent company if it is based in a country that applies this type of tax or alternatively to the other group companies.

The provisions of the Decree of 20 May 2024 implement into domestic law the temporary optional regimes and, in particular, those agreed upon at the OECD level in the Model Rules in Article 8.2 (the "**GloBE Rules**") in order to limit the administrative and compliance burdens for multinational groups and tax administrations called upon to apply and monitor the proper application of the global minimum taxation rules.

These regimes are a simplification for the first few years of the new rules and are intended to mitigate the difficulties that multinational or large-scale domestic groups will encounter in implementing effective data and information collection systems to be used to perform timely *global minimum tax* calculations.

In particular, the simplification regime (the so-called *Safe Harbour*) is introduced, which allows the supplementary tax liability to be considered as zero without the need to calculate the effective tax rate and any supplementary tax amount, as provided for under the ordinary rules of the GloBE Rules. Under certain circumstances, a "country" is considered to be at low tax risk. In fact, at the option of the reporting entity, with respect to a country, the supplementary tax liability due in a financial year beginning on or before 31 December 2026 and ending on or before 30 June 2028 is assumed to be zero if, with respect to any such financial year, the group meets one of the three requirements:

(i) the transitional *de minimis* requirement set out in Article 3;
(ii) the Simplified Effective Tax Rate requirement set out in Article 4;
(iii) the ordinary profit requirement of Article 5.

In this context, the principle defined in the OECD with the phrase "*once out, always out*", according to which if a group in one financial year does not opt or does not fulfil the requirements to benefit from the *Safe Harbour, as set out in* Article 2, it cannot access the simplified transitional regime in a subsequent financial year.

Of particular interest are the coordination provisions between the simplified transitional regime and the transitional exercise set forth in Article 54 of Legislative Decree No. 209 of 27 December 2023. In this regard, the Decree of 20 May 2024 provides for a substantial freeze of the transitional provisions for the entire duration of the *Safe Harbour* regime.

In the area of controls, the anti-abuse and control provisions are of particular relevance. Specifically, the anti-abuse provisions are aimed at preventing groups from exploiting accounting and tax asymmetries (*hybrid arbitrage arrangements*) for the purpose of artificially allowing one of the three requirements set forth in Articles 3, 4 and 5 to be met through transactions between companies and entities of the same group that result in deductions without inclusion, duplication of losses or double recognition of taxes.
Finally, it should be noted that within 36 months from the date of receipt of the communication in which the option for simplifications was exercised, the tax authorities may issue a request for information on the correct application of the relevant provisions. If there is no response to the request, or if the information provided shows that a Significant Error has been committed, membership of the simplified transitional regimes is revoked with the consequent application of the ordinary provisions.

MINISTERIAL PRACTICE

REPLIES TO REQUESTS FOR ADVANCE TAX RULING

- ✓ **Tax cost of participations held as at 28 January 1991 - Transitional regime (Reply to the request for advance tax ruling No. 101 of 10 May 2024)**

The Italian Tax Authorities, in their Reply No. 101 of 10 May 2024, analysed the possibility of applying the transitional regime of the financial income reform, as set forth in Article 14 of Legislative Decree No. 461 of 21 November 1997 in the case of the transfer of a participation already held on 1 July 1991 through a fiduciary registration.

In the present case, the shareholders of a company presented the tax authorities with the possibility of applying, to participations held as of 1 July 1998, the tax cost equal to the value of the company's net assets as of 28 January 1991, as certified by a sworn expert appraisal, omitting the indication of this appraised value in the company's income tax return for the period current as of 1 July 1998. On the contrary, according to the instructions for the Unico SC 1999 Form (FY 1998), for companies whose tax period started during 1997 and ended before 31 December 8, the taxpayer should have provided the data relating to the appraised value of the company and the identification data of the appraiser pursuant to Article 14, paragraph 9, of Legislative Decree 461/97. The Italian Tax Authorites, considering the failure to indicate the appraised value and the identification data of the appraiser in the Unico SC 1999 (FY 1998) tax return, deemed the solution put forward by the petitioners not applicable.

- ✓ **Deduction for building renovation pursuant to Article *16bis* of Presidential Decree No. 917 of 22 December 1986 (Income Tax Consolidation Act) due to the owner of the property (Reply No. 102 of 13 May 2024)**

With their Reply to the request No. 102 of 13 May 2024, the Italian Tax Authorities provided clarifications as to whether the holder of the property may also benefit from the IRPEF deduction for building renovation works pursuant to Article 16-*bis* of Presidential Decree No. 917 of 22 December 1986 (the "**Income Tax Consolidation Act**"), as well as of the deduction for the purchase of furniture and household appliances for the furnishing of the aforesaid real estate unit pursuant to Article 16, paragraph 2, of Law Decree No. 63/2013 (the *"furniture bonus"*).

It should be noted that the petitioner holds the property free of charge by virtue of a temporary assignment by the Command of the municipality to which he belongs, without having signed a lease or gratuitous loan agreement.

Specifically, the Italian Tax Authorities have confirmed that the ownership of the property must result from a deed (lease contract, including a financial one, or comodato) duly registered at the time the works are started, and there must be a existence at the time of incurring the expenses admitted to the deduction, even if prior to the aforesaid start.

In the case at hand, the Italian Tax Authorities have confirmed that the petitioner may benefit, in compliance with any other condition set forth by the rule and not object of the present appeal, from the deduction under the above mentioned Article *16 bis* as well as, all the requirements being met, from the 50% deduction of the expenses incurred, for the purchase of furniture and large household appliances, since the taxpayer has the property at his disposal by virtue of a different title with respect to the one listed above, but suitable to ensure its legal and material availability and bearing a certain date.

- ✓ **Superbonus – "Full" discount on invoice - Expenditure incurred - Date of issue of invoice and date of transaction (Reply to the request for advance tax ruling No. 103 of 13 May 2024)**

The Italian Tax Authorities, in their Reply to the request No. 103 of 13 May 2024, provided clarifications as to the possibility of benefiting from the relief, if the date of issue of the document in the event of rejection and the date of resubmission to the Interchange System straddle the years 2023 and 2024.

On 30 December 2023, the taxpayer sent to the SDI system an invoice referring to works carried out facilitated by the "110% Superbonus", applying the so-called "invoice discount" formula *pursuant to* Article 121, paragraph 1, of Law Decree No. 34 of 19 May 2020. However, the SDI system rejected the sending of the relevant invoice and the taxpayer proceeded, as soon as he became aware of what had happened, to correct the disputed elements and send the invoice again, pursuant to Circular No. 13/E/2018. In light of the above, the petitioner asks for clarifications on the rate that can be used with regard to the so-called "invoice discount" *pursuant to* Article 121, paragraph 1, of Law Decree No. 34/2020, in particular whether the same can remain unchanged at 110% or should be remodelled to 70%.

In the case at hand, the Italian Tax Authorities confirmed that if the invoice with the "full" consideration discount is sent in the last days of December 2023 and the taxpayer re-submits it in the five days following the receipt of the rejection message, the formal and substantial requirements to benefit from the relief at the 110% rate remain in place. Consequently, the taxpayer may benefit from the relief at the higher rate even if the expenses are incurred in 2023.

- ✓ **Investments by foreign funds in Italian real estate alternative funds (Reply to the request for advance tax ruling No. 104 of 13 May 2024)**

With their Reply to the request No. 104 of 13 May 2024, the Italian Tax Authorities provided clarifications in relation to investments made both directly and indirectly by foreign funds in Italian real estate alternative investment funds (AIFs).

The case concerns a Canadian company that acts as the manager of a Canadian pension fund that supplements the pension coverage of school teachers. The company benefits from a tax exemption and is supervised by the Financial Services Authority. It operates either directly or through corporate vehicles. Through one of the vehicles, it intends to acquire shares in an Italian real estate AIF by asking the Italian Tax Authorities whether the exemption from withholding tax on proceeds *pursuant to* Article 7, paragraph 3, of Law Decree No. 351 of 25 September 2001 can be applied.

The Italian Tax Authorities, in providing a positive response, recalls that foreign pension funds and undertakings for collective investment of savings are those entities that, under the legislation in force in the foreign State where they are established, have the substantive requirements and the same investment purposes as Italian funds and undertakings, regardless of their legal form and even if they do not have tax subjectivity, provided that there is a form of supervision over the fund or undertaking or over the entity entrusted with its management.

As clarified by Circular No. 2/E/2012, the non-taxability regime set forth in Article 7, paragraph 3, Law Decree No. 351/2001, applies not only in the case of a "direct" participation in the real estate fund, but

also when the foreign investor holds a 100% interest in corporate vehicles that make the investment, provided that these are also resident in so-called *white list* countries.

Since the pension fund, the management company and the vehicle are all resident in Canada, a *white list* State, and are subject to prudential supervision, the conditions for exemption from withholding tax are met. The Italian Tax Authorities specify that the vehicle will have to issue a self-certification of residence to the Italian SGR, as will the pension fund.

- ✓ **"Pro-rata" reimbursements of UCI capital and reinvestment obligation - Qualified investment (Reply to the request for advance tax ruling No. 105 of 16 May 2024)**

With their Reply to the request No. 105 of 16 May 2024, the Italian Tax Authorities provided clarifications on the subject of the so-called "*qualified investments*" made by mandatory social security institutions, such as pension funds and pension funds that benefit from the facilitated non-taxable regime pursuant to Article 1, paragraphs 88 to 96 of Law No. 232 of 11 December 2016.

Specifically, the Italian Tax Authorities confirmed that in the case of partial capital redemptions of UCIs that do not result in the cancellation of units or shares, but simply reduce their unit value, there is no reinvestment obligation for the purposes of calculating the time constraint of holding qualified investments, unlike redemptions with cancellation of units which, on the contrary, require the obligation to reinvest within 90 days.

In the present case, the applicant Fund applied to the Italian Tax Authorities for the tax relief in respect of an investment in a Luxembourg AIF decided in 2021. According to the Agenzia delle Entrate, the applicant Fund can benefit from the favourable tax regime because for the "*pro rata"* capital redemptions arranged on the initiative of the manager, which do not entail the cancellation of the AIF shares, which are the subject of qualified investments, the applicant Fund can continue to benefit from the favourable regime in question, provided that the AIF complies with the constraints provided for by the regulations, even after the disinvestments that entailed the partial capital redemptions.

- ✓ **Tax credit for investments in tangible capital goods 4.0 (Reply to the request for advance tax ruling No. 109 of 21 May 2024)**

The Italian Tax Authorities, in their Reply to the request No. 109 of 21 May 2024, provided clarifications regarding the purchase of a subsidised capital good by the purchasing company, which has already used such good without interruption on the basis of a rental agreement, cannot benefit from the 4.0 Tax Credit pursuant to Article 1, paragraphs 1051 to 1063, of Law No. 178 of 30 December 2020. In fact, the use of the asset at a date prior to the purchase means that the asset must be deemed to have already been previously used in a different capacity by the acquiring object, the requirement of the "*novelty of the asset being the object of the investment*" no longer being met.

With reference to the case at hand, the petitioning company requested the Italian Tax Authorities to benefit from the 4.0 Tax Credit for the purchase of the plant subject to an 18-month lease agreement without the option to redeem the asset. The Italian Tax Authority denied the applicant company the possibility to benefit from the 4.0 Tax Credit for the purchase of the plant because:

(iv) the use of the subsidised goods took place on the basis of a rental contract that lasted for a fixed period of time and could not be qualified as "*short*";

(v) The rental agreement did not provide for the option of final redemption but provided for the return of the equipment;

(vi) the use of the asset prior to the subsidised purchase means that the asset must be deemed to be "*an asset already previously used in a different capacity by the acquiring party*".

✓ Group VAT settlement - prohibition on allocation of past VAT credit reversed when settling pending disputes (Reply to the request for advance tax ruling No. 111 of 21 May 2024)

The Italian Tax Authorities published their Reply to the request No. 111 of 21 May 2024 concerning the VAT group settlement and the prohibition on allocating past VAT credit.
The group VAT settlement procedure, already governed by Article 73 of Presidential Decree No. 633 of 26 October 1972 ("**VAT Decree**") and by Ministerial Decree No. 11065 – Finance Min. of 13 December 1979 (amended in 2017), allows subsidiaries to offset VAT debits and credits in a unified manner. Since 2008, in particular, Law No. 244 of 24 December 2007 has sanctioned the prohibition for new companies participating in group liquidation to include past VAT credit in group calculations. Resolution No. 21/E of 2014, then, clarified how the prohibition applies to liquidations from 2008 onwards, regardless of the period in which the credit accrues.

The practice document in question continues along these lines, emphasising how the legislative intent was to create, as of 2008, a clear and definitive separation between VAT credits accrued before and those realised after entering the VAT grouping procedure.

✓ Eligibility for the deduction provided for building heritage recovery and energy requalification interventions pursuant to Article *16-bis* of the Income Tax Consolidation Act by the holder (Reply to the request No. 112 of 23 May 2024)

The Italian Tax Authorities, in their Reply to the request No. 112 of 23 May 2024, provided clarifications on the use of the deduction provided for building heritage recovery and energy requalification interventions in buildings pursuant to Article *16-bis* of the Income Tax Consolidation Act by the holder, who takes over the building title at a time subsequent to the authorisation of the same.

It should be noted that the applicant acquired the building rights to a collaborating building and became the owner of the plot of land later than when the municipality had already issued the building permit. At that time, the applicant applied for the transfer of the building permit and became the owner of the title to carry out the works, before they had begun.

In Circular No. 17/E of 26 June 2023, the Italian Tax Authorities pointed out the subjective requirements necessary to access the deduction and reiterated that it is available to taxpayers who own or hold, on the basis of a suitable title, the property subject to the interventions and bear the relevant expenses.

In particular, the Italian Tax Authorities confirmed the entitlement of the deduction to the holder of the building subject to the subsidised interventions with reference to the expenses incurred for the building interventions referred to in the rule, as the tax relief is also due to the taxpayer who holds the building on the basis of an appropriate title, such as a lease, including a financial lease, or a commodate contract.

- ✓ **Value of shares in non-resident companies received as a donation from a non-resident person (Reply to the request for advance tax ruling No. 114 of 23 May 2024)**

The Italian Tax Authorities, with their Reply to request No. 114 of 23 May 2024, provided clarifications, referring to paragraph 6 of Article 68 of the Income Tax Consolidation Act, concerning the method of calculation of capital gains deriving from shares of non-resident companies received as a donation by a non-resident party.

The Italian Tax Authorities, in particular, specified that the cost to be considered is that incurred by the donor. It also specified that the capital gain or loss from the transfer must be calculated by increasing the purchase value by all production-related charges and that the normal value of the shares may be used as a reference for determining the capital gain to be taxed only if that value has already been previously taxed.

Therefore, in the event that the shares are received by way of donation, the acquisition value is to be considered to be that determined in proportion to the cost or acquisition value that such shares had for the donors, increased by all charges related to the relevant acquisition, including the gift tax paid by the donee.

- ✓ **Single transfer of bare and full ownership interests in a single-member newco holding company - applicability of the controlled realisation regime (Reply to the request for advance tax ruling No. 116 of 24 May 2024)**

With their Reply to the request No. 116 of 24 May 2024, the Italian Tax Authorities provide clarifications on contributions of participations and the applicability of the controlled realisation regime.

The Italian Tax Authorities have clarified that, for tax purposes, contributions of equity interests held in bare and full ownership in a new single-member holding company are treated as transfers for consideration. This means that a natural person, not in business, who transfers a participation realises a capital gain or loss, calculated as the difference between the consideration received and the fiscally recognised cost, considering the normal value of the assets transferred, according to Article 9(5) and (2) of the Income Tax Consolidation Act.

Article 177(2) of the Income Tax Consolidation Act provides that shares or quotas received as a result of contributions are valued on the basis of the portion of equity formed by the transferee company as a result of the contribution. This criterion can avoid the emergence of capital gains if the book value of the shares received is equal to the last tax value of the shares transferred, thus maintaining tax neutrality. The legislation, as amended by Article 11-*bis* of Law Decree No. 34 of 30 April 2019, extends the controlled realisation regime even when the transferee company does not acquire legal control, provided that the participations transferred represent a certain percentage of voting rights or participation in the capital or assets and are contributed in companies wholly owned by the transferor.

The conditions for the applicability of the scheme are:

(i) the holdings must represent a percentage of voting rights or capital/asset participation above certain thresholds (2% or 20% for voting rights, 5% or 25% for capital/asset, depending on whether the securities are traded on regulated markets or not);
(ii) the participations must be transferred to companies wholly owned by the transferor.

The rule excludes contributions of mere usufruct rights from the controlled realisation regime, reaffirming the importance of contributions that confer shareholder status.

- ✓ **Contribution of PIR Compliant UCI units in PIR Alternatives (Reply to the request for advance tax ruling No. 117 of 28 May 2024)**

With their Reply to the request No. 117 of 28 May 2024, the Italian Tax Authorities expressed their opinion on the valuation for tax purposes of the units held in two alternative investment funds (AIFs), so-called "*PIR Compliant*", held by a pension fund that are contributed to two different AIFs (managed by two different asset management companies).

The Italian Tax Authorities state that, in the case of investments in UCI units, given the presumption of transfer for consideration aimed at excluding from the facilitated regime the income accrued up to the date of the contribution to the PIR, the values to be considered for the determination of the income are those at the date of the contribution.

In particular, for unlisted UCIS, the values to be taken into account are:

(i) as a general rule, those ascertainable from the latest available prospectus at the date of the contribution; and

(ii) those of purchase coinciding with the weighted average cost of subscription or purchase of the units on the same date.

With respect, on the other hand, to closed-end AIFs which have not yet completed the subscription phase, the Italian Tax Authorities clarified that, for the purposes of the correct taxation of the capital income accrued as at the date of the contribution to the PRI, where, between the date of the last available prospectus and the date of the contribution, there have occurred movements not reflected in the last available prospectus value, the value of the units or shares at the date of the contribution will be the value of the prospectus adjusted for the changes that have occurred up to the date of the contribution (otherwise, the determination of the accrued income at the date of the contribution would be made on the basis of mutually inconsistent values).

Finally, the Italian Tax Authorities emphasize that as a result of the contribution of the shares, the preferential PIR regime applies to income earned from that date.

- ✓ **Redetermination of tax value of *stock options* (Reply to the request for advance tax ruling No. 118 of 30 May 2024)**

The Italian Tax Authorities, with their Reply to the request No. 118 of 30 May 2024, clarified that the rules on the redetermination of the purchase value of equity interests, as set forth in Article 5 of Law No. 448 of 28 December 2001, are also applicable to option rights exclusively for the purposes of determining the capital gain realised through their disposal for consideration. It is clarified that it is with the occurrence of this prerequisite, i.e. the sale for consideration, that the owner realises a capital gain for the taxation of which the redetermined tax value may be relevant.

On the subject of the redetermination of the tax value of *stock options*, the Italian Tax Authorities recall what was set forth in Italian Tax Authorities Circular No. 12 of 31 January 2002 with respect to the possibility of extending the favourable rules provided by Article 5 of Law No. 448 of 24 December 2001 to the rights or securities through which the aforesaid shareholdings may be acquired (such as stock options, *warrants* and bonds convertible into shares). In this Reply, the Italian Tax Authorities clarify that the

prerequisite to benefit from the redetermined value is that the securities subject to redetermination are potentially capable of realising a capital gain.

In the present case, the options are not capable of independently producing a *capital gain*, as they are not transferable to third parties; therefore, the Italian Tax Authorities conclude that any redetermined value cannot be used by the taxpayer.

RESOLUTIONS

✓ Reciprocity Agreement between the Italian Republic and the United Kingdom of Great Britain and Northern Ireland for VAT refund purposes (Resolution No. 22 of 2 May 2024)

With Resolution No. 22 of 2 May 2024, the Italian Tax Authorities provided clarifications on the agreement signed between Italy and the United Kingdom for the recognition of reciprocity for the purposes of granting VAT refunds for purchases made by Italian operators on British territory and by British operators on Italian territory. Prior to the signing of that agreement, and consequently in the absence of a reciprocity agreement between the States, the application of VAT refunds by British businesses required a complex procedure.

The Italian Tax Authorities confirmed that for transactions carried out from 1 January 2021 with the United Kingdom, Article *38-ter* of the VAT Decree is applicable for the purposes of granting VAT refunds and therefore:

(i) persons established in Italy may apply to the United Kingdom for a VAT refund in accordance with the legislation in force there;

(ii) persons established in the United Kingdom may apply for a VAT refund if the conditions set forth in Article *38-ter* of the VAT Decree are met. In this case, the refund application must be submitted according to the procedures established by the Order of the Director of the Italian Tax Authorities of 1 April 2010.

✓ Tax credits for "Transition 4.0" investments - Article 6 of Law Decree No. 39 of 29 March 2024 (Resolution No. 25 of 15 May 2024)

With Resolution No. 25 of 15 May 2024, the Italian Tax Authorities provided clarification on the use of the tax credit for 4.0 investments.

Article 6 of Law Decree No. 39 of 29 March 2024 provided that:

(i) for investments from 30 March 2024, a prior communication must be submitted (with the total amount of the investments to be made and the breakdown of the credit for use), updating the communication *ex post* upon completion of the investments;

(ii) for investments made between 1 January 2023 and 29 March 2024, only the final report needs to be submitted.

There is a change in the way the reference year is indicated for those subject to the communication, the year of making, i.e. completion of the investment will be used and no longer the year of interconnection.
For investments begun in 2022 that are interconnected in 2023, the Italian Tax Authorities have established that the tax credit can still be used with tax code 6936, specifying 2022 as the reference year.

The Directorial Decree of the Ministry of Enterprise and *Made in Italy* Industry of 24 April 2024 defined the content and modalities for sending the communication forms. The communication for the use of these credits must be sent to the GSE by PEC.

The same Resolution established that, in addition to the requirement of the interconnection of the assets in the hypotheses provided for by the discipline itself, the companies that have complied with the sending of such communication, may use the credits in compensation, using specific tax codes indicated in Resolution No. 19/2024 and as "reference year" the year of completion of the subsidised investment reported in the same communication.

In the event that the credits used for offsetting do not match the data in the communications sent by the Ministry of Enterprise and *Made in Italy* Industry to the Italian Tax Authorities, the relevant F24 forms will be discarded.

CIRCULARS

- ✓ **Legislative Decree No. 1 of 8 January 2024 on "*Rationalisation and simplification of rules on tax compliance*" - Measures on tax payments, mandatory communications and digital services (Italian Tax Authorities Circular No. 9 of 2 May 2024)**

With Circular No. 9 of 2 May 2024, the Italian Tax Authorities provided further clarifications on the tax simplifications introduced by Legislative Decree No. 1 of 8 January 2024 (**"Compliance Decree"**):

(i) with reference to the new terms for the payment in instalments of the amounts due by way of balance and first advance payment of taxes and contributions deriving from declarations, Article 8 (a) postponed from 30 November to 16 December the deadline for finalising the payment in instalments of the amounts due by way of balance and first advance payment, and (b) identified a single deadline, the 16th day of each month, by which to make the payment of the monthly instalments following the first. In addition, Article 9 set the minimum payment threshold at EUR 100 for the payment of periodic VAT and withholding taxes on self-employed income;

(ii) On the subject of rationalising compulsory communications, Article 12 has provided for those who must send data on healthcare expenses to the Health Insurance Card System to do so every six months, specifically (a) by 30 September of each year, for healthcare expenses incurred in the first six months of the same year, and (b) on 31 January of each year, for healthcare expenses incurred in the second six months of the previous year;

(iii) Article 10 provided for the suspension of the sending of notices and invitations to the taxpayer during the tax periods (a) from 1 August to 31 August and (b) from 1 December to 31 December.

- ✓ **Law No. 213 of 30 December 2023 - News on the discipline of short leases (Italian Tax Authorities Circular No. 10 of 10 May 2024)**

In their Circular No. 10 of 10 May 2024, the Italian Tax Authorities illustrated the news introduced by Article 1, paragraph 63 of Law No. 213 of 30 December 2023 (the "**Budget Law 2024**") concerning short leases, which concern:

(i) the increase in the rate of the flat-rate tax on short-term rentals from 21% to 26%, without prejudice to the possibility of indicating in the declaration only one dwelling to which the 21% rate continues to apply;

(ii) The amendment of the rules on the compliance of non-resident intermediaries to bring them into line with EU law (Article 4, paragraph 5-*bis* of Law Decree No. 50 of 24 April 2017).

The Italian Tax Authorities specifies that the new provisions will apply as of the date of entry into force of the Budget Law 2024 and, therefore, as of 1 January 2024.
As far as intermediaries are concerned, it should be noted that, although the legislature has raised the rate of the flat-rate tax to 26%, it has opted not to change the amount of the withholding that intermediaries must operate when they intervene in the payment or collection of short-term rental fees, which remains set at 21%. The withholding must always be on account, so that the taxpayer who receives the withholding from the intermediary must in any case determine the tax due for the tax period, regardless of the tax regime adopted by the beneficiary, and pay any balance after having deducted the withholding incurred.

The Circular also specifies that in the event that persons exercising real estate intermediation activities and/or managing telematic portals, collect or intervene in the payment of rents, the taxpayer is obliged, for each tax period, to determine the tax (ordinary or substitute) due, and to pay any balance of the tax, obtained after deducting the withholding taxes incurred, within the deadline for payment of the balance of income tax.

Finally, the way in which non-resident “intermediaries” can fulfil their tax obligations (concerning notices and withholding taxes) related to the regulation of short-term rentals has been changed. The regulatory intervention aimed to bring the national tax system into line with the content of the EU Court of Justice Judgment, 22 December 2022, Case C-83/21, Airbnb.

✓ Law Decree No. 215 of 20 December 2023, converted, with amendments, by Law No. 18 of 23 February 2024, and Law Decree No. 39 of 29 March 2024 - Special Arrangement (Italian Tax Authorities Circular No. 11 of 15 May 2024)

With Circular no. 11 of 14 May 2024, the Italian Tax Authorities provided some clarifications in relation to the special tax amnesty pursuant to Law no. 197 of 29 December 2022 ("**Budget Law 2023**"), with a focus on the scope of application of the extension provided for by Law Decree no. 39 of 29 March 2024.

It is similar to the ordinary tax amnesty, introduced by the Budget Law 2023, but differs from the latter in that the reduction of penalties is 1/18th of the minimum and the amounts can be paid in instalments.

Under the previous wording of Article 1, paragraph 174 ff. of the Budget Law 2023, in order to benefit from the amnesty concerning violations relating to declarations committed up to 31 December 2021, it would have been necessary to remove the violation, specifically to submit the supplementary declaration and/or correct the invoice, and subsequently pay the amounts or the first instalment by 30 September 2023.
With the aim of encouraging spontaneous compliance, it has been decided to extend the aforementioned institute to violations concerning validly submitted declarations relating to the tax period in progress until 31 December 2022.
Adherence to the institute is perfected by paying, by 31 May 2024, the penalty equal to 1/18th of the statutory minimum, plus tax and interest, in a single instalment or the first instalment, as well as by removing, within the same deadline, the irregularities or omissions that one intends to rectify.

In the event that the taxpayer wishes to opt for payment by instalments, on the three instalments following the first, which must be paid by 30 June, 30 September and 20 December respectively, he will be required to pay interest at the rate of 2% *per annum*.

The Circular also provided clarifications on the provisions of Article 7, paragraph 7 of Law Decree No. 39 of 29 March 2024, which establishes the reopening of the terms for adhering to the special amnesty for violations concerning declarations validly submitted in relation to the tax period in progress as of 31 December 2021 and previous tax periods, for those who had not completed the regularisation procedure by the original date of 30 September 2023.

Also in this case, the completion of the "new" regularisation presupposes the removal of the irregularities or omissions and the payment of the amounts due, in a single instalment, by 31 May 2024. Alternatively, it is possible to pay, within the same deadline, an amount equal to five of the eight instalments provided for in Article 1, paragraph 174 of the Budget Law 2023.

The three remaining instalments, on which interest is charged at the rate of 2% *per annum*, are due by the deadlines of 30 June 2024, 30 September 2024 and 20 December 2024. However, the repayments already made under the law converting Law Decree No. 215 of 30 December 2023 ("**Decreto Milleproroghe**"), i.e. to 29 February 2024, remain valid and no repayment is made.

In the practice document, the Italian Tax Authorities also specified that those who can benefit from the reopening of the deadlines are those who:

(i) have not previously (by 30 September 2023) finalised the regularisation procedure, as they have not taken all the necessary steps to complete it;

(ii) have completed the regularisation procedure, limited to certain breaches, and now wish to use it to regularise further breaches other than those previously regularised in relation to the same or different years;

(iii) have completed the regularisation procedure, limited to the infringements committed in certain years, by 30 September 2023, and now intend to make use of it to regularise further infringements relating to years not previously regularised;

(iv) have completed the regularisation procedure, limited to certain breaches, by 30 September 2023, but have forfeited the benefit of the instalment facility, provided that they intend to regularise breaches other than those already regularised. Such taxpayers having forfeited the benefit of the instalment facility, cannot in fact benefit from the reopening of the terms for regularising the same breaches. For such unpaid amounts, payment will be made by registration of the claim.

The provisions of Article 21 of Law Decree No. 347 of 23 December 2023 remain in force:

(i) Violations arising from the settlement of the declaration, such as omitted/late payments of declared taxes as well as omitted declarations, are not amnestible;
(ii) omissions/infringements of filling in Form RW are not amnestible, but failure to declare foreign income and violations of IVIE/IVAFE are amnestible;
(iii) violations of the formal control of the declaration pursuant to Article *36-ter* of Presidential Decree No. 600 of 29 September 1973 are redeemable.

CASE LAW UPDATE

- ✓ **Assessment - Direct taxation and VAT - Declaration - FISCAL MONITORING - Voluntary disclosure - Article *5-quater*, Law Decree No. 167 of 1990, Conv. in L.**

No. 227 of 1990 - Application for voluntary cooperation (Supreme Court, Judgment No. 11987 of 3 May 2024)

With Judjment No. 11987 of 3 May 2024, the Supreme Court takes a position in relation to the issue of *voluntary disclosure* (or voluntary cooperation), for "assets or financial assets" governed by paragraph 1 of Article *5-quater* of Law Decree No. 167 of 28 June 1990, converted into Law No. 227 of 4 August 1990.

Paragraph 1 of Article *5-quater*, in the wording in force *ratione temporis*, provides that the author of the breach of the declaration obligations referred to in Article 4, paragraph 1, may avail himself of the voluntary cooperation procedure referred to in this Article for the emersion of the financial and patrimonial assets constituted or held outside the territory of the State.

The Court clarifies that the term “patrimonial or financial asset” is to be understood as meaning not only the current ownership of real estate or a shareholding, but any active legal position involving real estate or a shareholding, thus also the right to enter into a contract for the purchase of real estate following a transfer of a contract.

- ✓ **Free patrimonial donation - donation deductible from income only if the conditions of Article 100 of Presidential Decree No. 917 of 22 December 1986 are met (Supreme Court, Judgment No. 14925 of 28 May 2024)**

By Judgment No. 14925 of 28 May 2024, the Supreme Court ruled on the deductibility for tax purposes of the waiver of credit between companies belonging to the same group.

In particular, the Court ruled that a gratuitous asset allocation, which is not based on any commercial relationship, made by a company in favour of another, non-participating company belonging to the same group, constitutes a donation for tax purposes, deductible only under the conditions of Article 100 of the Income Tax Consolidation Act.

In the case at hand, a company had waived a large receivable due from another company belonging to the same group - not an investee - and had deducted the relevant sum from its taxable income, qualifying it as the disbursement of a '”ten-year bonus”. By a notice of assessment, the Italian Tax Authorities recovered the cost, classifying it as a non-deductible donation, since it did not meet the requirements of Article 100 of the Income Tax Consolidation Act.

The Court upheld the Italian Tax Authorities’ action and clarified that the deductibility of the waived credit should not be excluded in advance, but only upon verification that it is not justified either by a negotiated title or by a group company policy.

- ✓ **The legal interest on the amounts subject to detention due under Article *38-bis* of Presidential Decree No. 633 of 26 October 1972 is due to the taxpayer only if the detention order is unlawful (Supreme Court, Judgment No. 11886 of 3 May 2024)**

In Judgment No. 11886 of 3 May 2024, the Supreme Court ruled on the tax authorities' liability for interest accrued on the amounts due by the latter by way of VAT refund during the period in which the refund was denied due to administrative detention.

With regard to the accrual of statutory interest during the period of detention, the Court clearly ruled, recalling a well-established line of case law, that the accrual of statutory default interest is conditional on whether or not the detention was lawful.

The Court, in particular, set out the following principle of law: "on *the subject of VAT refunds, statutory interest, payable to the extent and in the manner provided for in Article 38 bis of Presidential Decree No. 633 of 1972, is to be classified as interest on arrears and is payable by the tax authorities in the event of unlawful administrative detention of the credit, but not also in the event of lawful administrative detention or attachment, since compensatory interest does not accrue in such cases"*.

In the case of legitimate detention, the law does not provide for the payment of other forms of interest of a compensatory nature on the VAT claim. The reason for this approach lies in the fact that the legislature considers the suspension of payment to be attributable to the creditor.

EUROPEAN UNION

CASE LAW

- ✓ **Contribution of real estate through shares, VAT taxable on issue value (EU Court of Justice, 8 May 2024, Case C 241/23)**

In the context of a dispute between a company ("A") that had increased its capital by contributions in kind from two other companies ("B") and ("C"), and the Polish Tax Authorities, which refused to take into account the deduction made by company A of the amounts of VAT referred to in the invoices issued by B and C by way of contributions of immovable property, the Court of Justice of the EU had the opportunity to clarify the interpretation of Article 73 of Directive 2006/112/EC ("the **VAT Directive**").

In contracts concluded by company A with companies B and C, concerning the transfer of real estate of the latter and a cash contribution in exchange for shares in A, the parties had agreed that the consideration for the capital contribution would be the issue value of the shares. The preliminary question concerned the determination of the taxable amount.

It follows from the wording of Article 73 of the VAT Directive that the taxable amount includes everything which constitutes the consideration paid or payable to the supplier for the supply of goods and services. In the present case, the consideration must represent the consideration actually received by company A for the transfer of the goods, and not a consideration merely estimated, albeit on objective criteria.

The Court ruled, therefore, that Article 73 of the VAT Directive, as amended by the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union ("**TFEU"**) and the Treaty establishing the European Atomic Energy Community is to be interpreted as meaning that the taxable amount of a contribution of immovable property by a first company to the capital of a second company in exchange for shares in the latter company, where those companies have agreed that the consideration for that contribution to the capital is to be the issue value, is to be determined according to the issue value of those shares, and not according to the nominal value of the shares.

ASSONIME

✓ Circular No. 10/2024 - The *participation exemption* regime for capital gains on participations realised by non-residents

Circular No. 10/2024 illustrates the news introduced by the Budget Law 2024, which allows for a 95% tax exemption on capital gains related to the disposal of qualified participations realised by companies or entities resident in other EU Member States or in EEA States with an adequate exchange of information if the requirements of the *participation exemption* ("**PEX**") regime are met (Article 1, paragraph 59 of the Budget Law 2024).

The regulatory intervention follows the jurisprudential orientation that considered the unequal treatment resulting from the lack of access to the PEX regime for persons residing in other Member States to be incompatible with the fundamental freedoms of the TFEU.

The Circular points out that there still remain certain distinctive features between the taxation discipline of PEX capital gains realised by companies resident in Italy and those realised by companies resident in other Member States. The remaining differences derive mainly from the fact that, in accordance with the principles of the domestic tax system, capital gains on participations realised by non-resident entities constitute miscellaneous income and are determined and subject to taxation according to rules that do not coincide with those applicable when the capital gains in question contribute to the formation of business income.

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