FIVERS

Tax Update

June 2024

Summary

REGULATORY UPDATE

✓ Collaborative Compliance (Ministerial Decrees 29 April 2024 and 20 May 2024)

Ministerial Decrees No. 132 of 29 April 2024 and 20 May 2024 were published in the Official Journal of 7 June 2024, regarding the Collaborative Compliance regime pursuant to Articles 3 to 7 of Legislative Decree No. 128 of 5 August 2015.
The regime offers the opportunity to manage situations of uncertainty through a prior confrontation on factual elements, as well as lending itself to preventing and resolving in advance potential tax disputes, with benefits for both the Italian Tax Authorities and the taxpayer.
In particular, the decrees concern:

- Code of Conduct: the Ministerial Decree of 29 April 2024 approves the Code of Conduct, which is aimed at indicating and defining the commitments mutually undertaken between the Italian Tax Authorities and the taxpayers adhering to the Collaborative Compliance regime. The Code of Conduct binds taxpayers starting from the tax period in which the request to the Italian Tax Authorities to adhere to the regime is made and is tacitly renewed for all subsequent tax years, unless the taxpayer expressly informs the Italian Tax Authorities not to remain in the Collaborative Compliance regime.
- Right of request for advance tax rulings: the Ministerial Decree of 20 May 2024 made amendments to the Ministerial Decree of 15 June 2016 regarding the right of request for advance tax rulings for taxpayers adhering to the aforementioned regime. Among the amendments, the decree provides that the Italian Tax Authorities, before notifying an unfavorable response to a request for advance tax ruling, or before formalizing any other position contrary to a risk communication, shall invite the taxpayer to a cross-examination to explain its position.

✓ Approval of the methodology for the two-year composition agreement (Ministerial Decree of 14 June 2024)

The Ministerial Decree No. 139 of 14 June 2024 published in the Official Journal of 15 June 2024, approved the methodology for calculating two-year composition proposals. This methodology establishes the minimum sectoral profitability levels, based on the employee expenses declared by ISA subjects; the income for the purposes of the arrangement may not be lower than this value, which varies depending on the ISA applicable in the case in question.
Exceptional circumstances are also identified and, if they lead to a reduction in income of more than 50 per cent with respect to the subject matter of the arrangement, they cause its cessation.

✓ Agreement on smart working for cross - border workers in Switzerland

On 6 June 2024, the new agreement between Italy and Switzerland was subscribed, definitively regulating smart working for cross-border workers. The Agreement is effective retroactively as of 1 January 2024 and follows Law No. 83 of 16 June 2023 which ratifies the Italy-Switzerland Agreement on the Taxation of cross-border workers and the intent declaration signed in November 2023. The signing of the Protocol of Amendment to this Agreement allows cross-border workers to work 25% of their working hours remotely, at home in their State of residence during the calendar year, without losing their frontier status.
This provision applies both to cross-border workers who tax their income according to recent regulations, for whom a system of concurrent taxation in the two States is provided for, and to cross-border workers who fall under the transitional regime pursuant to Article 9 of the Italy-Switzerland Agreement of 23 December 2020, for whom the criterion of exclusive taxation in the State where the work activity is carried out (Switzerland, for Italian cross-border commuters) continues to apply.

✓ Inventory regularization: publication of the increase coefficients (Ministerial Decree of 24 June 2024)

The Ministerial Decree of 24 June 2024, No. 147, was published in the Official Journal of 25 June 2024, which defines the increase coefficients that business operators that do not adopt international accounting standards may use for the adjustment of the initial inventories pursuant to Article 1, paragraphs 78 to 80, of Law No. 213 of 30 December 2023).
Tables containing the coefficients to be applied for each Ateco activity class are attached to the decree.

✓ Increase in deductible labour costs for new hires (Ministerial Decree of 25 June 2024)

The Ministerial Decree of 25 June 2024 (published in the Official Journal no. 154 of 3 July 2024) sets forth the procedures for implementing Article 4 of Legislative Decree no. 216 of 30 December 2023, which provides that, for the tax period following the one in progress as of 31 December 2023, for the purposes of determining income, business owners and those engaged in the arts and professions are entitled to an additional deduction if they hire new employees, with permanent employment contracts, falling within the categories of workers deserving greater protection set out in Appendix 1 of the aforementioned legislative decree. In particular:

- Determination of the benefit**:** the cost of newly hired personnel with an open-ended employment contract is increased, for income determination purposes, by an amount equal to 20% of the cost referable to the employment increase. It is therefore an extra deduction equal to 20% (or 30% in certain cases) of the cost referable to the increase in employment and operates for income tax purposes (not IRAP). The benefit therefore takes the form of a downward adjustment to be made in the income tax declaration.
- cost attributable to the increase in employment**:** if there is an increase in employment, the cost to be assumed is equal to the lower of
  - the cost actually attributable to new hires (item B.9. Income Statement, in accordance with OIC 12);
  - the increase in the total cost of employees (item B.9. Income Statement) compared to that for the year 2023.
- Measure of the super deduction: to determine the income, the personnel cost as determined above is increased (Art. 5 paras. 2 and 3 of the Ministerial Decree of 25 June 2024):
  - by an amount equal to 20%;
  - by a further 10% in relation to new open-ended recruitments of employees falling within each of the categories deserving greater protection identified in Annex 1 to Legislative Decree No. 216 of 30 December 2023; in this case, therefore, the total increase will be 30% (see the explanatory report to the Ministerial Decree of 25 June 2024).

✓ Revision of the tax penalty system (Decree-Law No. 87 of 14 June 2024)

It has been published in the Official Journal of 28 June 2024 no. 150, the Legislative Decree no. 87 of 14 June 2024 which revises the tax penalty system, and amends in particular (i) Legislative Decree no. 74 of 10 March 2000 regulating income tax and VAT violations, (ii) Legislative Decree no. 471 of 18 December 1997 concerning non-criminal tax sanctions in the field of direct taxes, VAT and tax collection, and (iii) Legislative Decree no. 472 of 18 December 1997 concerning general provisions on administrative tax sanctions, production and consumption, and other indirect taxes.
The main innovations concern the principle of proportionality of sanctions; in fact, if circumstances concur that make the disproportion between the violation committed and the applicable sanction manifest, the latter will be reduced to up to 1/4 of the prescribed measure or increased by up to half in the presence of particularly serious circumstances.

A case of non-punishability has been introduced, whereby a taxpayer who decides to comply with the Tax Administration's indications on abuse of law or tax avoidance, by submitting a supplementary declaration within 60 days of the publication of the practice documents that made the irregularity apparent and paying the tax, provided that the violation was due to conditions of uncertainty, will not be penalised.
The new penalties are reduced compared to the current ones: for example, false declaration (income tax, VAT, IRAP, 770) will no longer be penalised by 90% to 180%, but by 70% of the higher tax; omitted payments will no longer be penalised by 30%, but by 25%; undue offsetting of non-existent credits will no longer be penalised by 100% to 200%;, but by 70% and in the case of undue credits, no longer by 30%, but by 25%.
Entry into force and *favor rei*: the new penalties introduced by the mentioned Decree are applied only to violations committed on or after 1 September 2024 and are therefore not retroactive, without application of the *favor rei* principle.
Recovery of penalty and legal accumulation: another significant innovation introduced by the reform is the possibility to take advantage of the 'legal accumulation' institute, which allows a single penalty to be served for several violations. The cumulation operates limitedly to the specific tax and the specific tax period. In order to calculate the single penalty applying in case of voluntary disclosure so called ravvedimento operoso, the Italian Tax Authorities will provide taxpayers with a specific software. In this case, after the one-year deadline or the deadline of the declaration in which the mistake was made, the reduction of the penalty changes from 1/8 to 1/7.
Non-entitled claims and non-existent claims: the decree introduces the definition of non-entitled claims and non-existent claims. Receivables that are not due are to be understood as those that, although they meet the subjective and objective requirements specifically set forth in the relevant regulations, are based on facts that do not fall within the attributive discipline due to the lack of further elements or qualities required for the recognition of the receivable. Credits that are utilized in violation of the utilisation methods provided for by the laws in force or, for the relating excess, those utilized more than the amount established by the reference norms, are considered as not due (non-entitled claims). Non-existent credits are those for which the prescribed objective or subjective requirements are wholly or partially lacking, or the same are the subject of fraudulent representations, implemented with materially or ideologically false documents, simulations, or artifices.

RESOLUTIONS

✓ Identification of the competent office in implementation of Article 38-*bis*, paragraph 1(g) of Presidential Decree No. 600 of 29 September 1973 (Resolution No. 257290 of 5 June 2024)

With Resolution No. 257290 of 5 June 2024, the Italian Tax Authorities clarified the procedures to be applied in case the taxpayer's tax domicile has not been specified (as stated in Article *38-bis*, paragraph 1, letter g) of Presidential Decree No. 600 of 29 September 1973, introduced by Legislative Decree No. 13 of 12 February 2024), providing that the jurisdiction to establish the recovery act pertains:

- to the office of the Italian Tax Authorities competent by reason of the tax domicile of the person at the time of the commission of the infringement; or,
- in the absence of a fiscal domicile, to the Provincial Directorate of the Italian Tax Authorities that at the time of the commission of the infringement is competent with reference to the place where the infringement was committed.

- ✓ **Approval of the communication model for the use of the tax credit for investments in the Special Economic Zone for Southern Italy (Resolution No. 262747 of 11 June 2024)**

With Resolution No. 262747 of 11 June 2024, the Italian Tax Authorities approved the form to be used in order to communicate the use of the tax credit for investments in the Special Economic Zone for Southern Italy ('ZES Unica') and the relevant instructions.
The form is used by companies intending to benefit from the tax credit for investments made from 1 January 2024 to 15 November 2024 and is required to be submitted from 12 June 2024 to 12 July 2024, by electronic means only.
The Italian Tax Authorities also clarified that, in order to be able to use the tax credit relating to investments not yet realized at the date of submission of the form or realized but for which the relevant electronic invoices had not been received on the same date and/or the required certification had not been issued, the taxpayer may use - from 31 July 2024 until 17 January 2025 - the same form to communicate to the Italian Tax Authorities the actual amount of the investments realized and the relevant tax credit accrued (so-called 'supplementary communication').

- ✓ **Notifications to promote spontaneous compliance for the 2023 VAT return (Resolution No. 264078 of 12 June 2024)**

With Resolution No. 264078 of 12 June 2024, the Italian Tax Authorities has announced the transmission of irregularities notices in the Annual VAT return related to FY2023.
In particular, the Italian Tax Authorities use the data of electronic invoices issued and daily receipts transmitted telematically by VAT taxable persons to check, with reference to FY2023, whether a VAT return has not been submitted or it has been submitted without filling in the VE section or with output transactions declared for an amount lower than EUR 1,000.
Notifications are sent by PEC to the digital domicile of individual taxpayers, who can also consult them by entering in the so called 'Cassetto fiscale' or in the reserved area of the 'Fatture e Corrispettivi' portal.
Any declaration not yet submitted may be filed within 90 days of the ordinary deadline (which was 30 April), benefiting from reduced penalties (Article 13(1)(c) of Legislative Decree 472 of 18 December 1997).

MINISTERIAL PRACTICE

ITALIAN TAX AUTHORITIES FAQ

- ✓ **Tax credits for 'Transition 4.0' investments - Data transmission (Italian Tax Authorities FAQ of 19 June 2024)**

In its FAQ of 19 June 2024, the Italian Tax Authorities provided clarifications on the lack of payment receipts for F24 forms relating to the use of 'Transition 4.0' tax credits, following the submission of the relevant communications.
The Italian Tax Authorities clarified that, taking into account the technical time required for the processing of communications by the Gestore dei Servizi Energetici ('GSE') and the subsequent transmission to the Italian Tax Authorities, in order to avoid the rejection of F24 forms due to the absence of communications already sent by the company to the GSE but not yet transmitted by the latter to the Italian Tax Authorities, as of 17 June 2024 the receipts of the relevant F24 forms have been suspended for 30 days. During this period, the Italian Tax Authorities periodically checks whether the information from the GSE has been acquired and, in the event of a positive outcome, unblocks the F24 proxy without prejudice to the date of payment. Otherwise, if no positive feedback is received within 30 days, the F24 proxy will be rejected.

REPLIES TO REQUESTS FOR ADVANCE TAX RULING

- ✓ **VAT - Variation notes - Unsuccessful arrangement procedure (Reply to the request for advance tax ruling No 126 of 3 June 2024)**

With their Reply No. 126 of 3 June 2024, the Italian Tax Authorities provided clarifications on the time limit after which it is possible to issue a decreasing variation note for VAT purposes pursuant to Article 19 of Presidential Decree No. 633 of 26 October 1972 ("VAT Decree"), in light of the amendments introduced by Decree-Law No. 73 of 25 May 2021 on the issue of time limits. In the case at stake, the debtor was initially subject to an arrangement procedure (initiated before 26 May 2021) and subsequently to bankruptcy proceedings.
In this regard, the Italian Tax Authorities referred to Article *69-bis* of Royal Decree No. 267 of 16 March 1942 and Article 170(2) of Legislative Decree No. 14 of 12 January 2019, by which the Legislator has enshrined the principle that there is a temporal link between different insolvency procedures intended to regulate a situation of business failure.
The Italian Tax Authorities clarified that - since the arrangement with creditors had been initiated before 26 May 2021 - the provisions of Article 26 of the pre-reform VAT Decree remain applicable, so that it is necessary to wait until the procedure is unsuccessful in order to issue the VAT variation note.

- ✓ **VAT group - inclusion of a new company - incorrect indication of the VAT number in active and passive invoices (Reply to the request for advance tax ruling No 128 of 3 June 2024)**

With their Reply to the request No. 128 of 3 June 2024, the Italian Tax Authorities provide clarifications about inclusion of a company in an already established VAT Group and on the method of regularizing active and passive invoices bearing the individual VAT number and not the VAT Group number.
In particular, the Applicant stated that the notice for the inclusion of the new company in the Group VAT was submitted late taking advantage of the "*remissione in bonis"* institute and, for this reason, the indication of the Group VAT number led to the rejection of the invoices.
The Italian Tax Authorities agreed with the solution put forward by the taxpayer. In particular, given the effective date of the company's inclusion in the VAT Group as of January 1, 2024 and, consequently, the termination of its individual tax liability for VAT purposes as of the same date and for the effective time of the option, regularization can take place (i) for purchase invoices, through the procedure set forth in Art. 6, paragraph 8, of Legislative Decree No. 471 of December 18, 1997 with the issuance of self-invoices and their accounting for the purposes of VAT deduction; (ii) for sales invoices with the inclusion in the Group's settlement, in order to ensure compliance with the reporting and payment obligations.

- ✓ **VAT - Treatment applicable to contributions granted by a public body to beneficiaries, in the form of services, through implementing entities (Reply to the request for advance tax ruling No 131 of 7 June 2024)**

With their Reply to the request No. 131 of 7 June 2024, the Italian Tax Authorities provide clarifications about the application of VAT on contributions granted, through implementing entities, by a public body in the form of innovative services financed in the PNRR.
In particular, the Italian Tax Authorities stated that the financing of activities related to the provision of services to the beneficiaries is not subject to VAT neither in the relationship between the public body and the implementing party as a disbursement of money within the meaning of Article 2(3) of the VAT Decree, nor in the relationship between the latter and the beneficiaries, again due to the lack of the objective prerequisite.

✓ Tax cost of non-resident company shares acquired by inheritance (Reply to the request for advance tax ruling No 132 of 12 June 2024)

With their Reply to the request No. 132 of 12 June 2024, the Italian Tax Authorities provide clarifications about the taxation, pursuant to Article 68, paragraph 6 of Presidential Decree No. 917 of 22 December 1986 ("TUIR"), of a testamentary bequest of shares that is taxable both in Italy and in France.
In particular, the Italian Tax Authorities stated that in the case of the acquisition of participations by inheritance, the tax cost to be taken as a reference for the computation of the capital gain to be taxed is the defined value or, failing that, the value declared for the purposes of the relevant tax, increased by the charges strictly inherent to the acquisition of the participation itself, including the inheritance and gift tax, even if paid abroad.

✓ Offsetting: exclusion of the prohibition in the presence of debts entered on a tax roll exceeding €100,000 for which regular instalment payments are in progress (Reply to the request for advance tax ruling No 136 of 20 June 2024)

With their Reply to the request No. 136 of 20 June 2024, the Italian Tax Authorities provide clarifications about the prohibition of offsetting tax credits by means of the F24 form for persons with debts on the tax rolls exceeding Euro 100,000 (Article 4 of Decree-Law No. 39 of 29 March 2024, converted with amendments by Law of 23 May 2024).
In particular, it ruled on the possibility of being able to make offsets by means of the F24 form in the event that:

- debts owed to the Italian Tax Authorities in excess of EUR 100,000 are subject to instalment plans for which no forfeiture has occurred;
- the taxpayer holds tax credits, including some deriving from the "*superbonus*", pursuant to Article 119 of Decree-Law No. 34 of 19 May 2020.

With reference to point 1, the Italian Tax Authorities stated that, in continuity with the provisions already contained in Article 31 of Decree-Law No. 78 of 31 May 2010, without prejudice to specific limits (e.g. quantitative or temporal) provided for by the rules establishing the credits to be utilized or deriving from the same, as the law stands at present, the prohibition of offsetting does not apply in the presence of debts entered on a tax roll for which an instalment facility has been granted, if the payments of such instalment facility are regular.
With reference to point 2, on the other hand, the Italian Tax Authorities stated that the use of tax credits deriving from the so-called "*bonus edilizi*", against of tax assessments exceeding €10,000, will be subject to specific regulation by the Minister of Economy and Finance, as provided for in Article 121, paragraph 3bis, of Decree-Law No. 34 of 19 May 2020.

✓ Dematerialization and storage of expense reports and supporting documents (Reply to the request for advance tax ruling No 142 of 24 June 2024)

With their Reply to the request No. 142 of 24 June 2024, the Italian Tax Authorities provide clarifications about the possibility of dematerializing expense reports and documents justifying expenses incurred by employees during business trips, mainly for taxi transport services, paid using, as a rule, the company credit card.
In particular, the Italian Tax Authorities stated that this topic had already been addressed in several practice documents, including Resolution No. 46/E of 10 April 2017 and Circular No. 5/E of 29 March 2018.
In this regard, it is emphasized by the Italian Tax Authorities that, where the requirements of immodifiability, integrity and authenticity of documents are guaranteed, it is possible to adopt the dematerialization process.
Where, on the other hand, the principal does not take the trouble to ask for an invoice, in the absence of another tax document justifying the service, the receipt issued by the electronic means of payment does

not appear to be sufficient to identify the expense incurred for the purposes of the deductibility of the cost, in view of the generic nature of the data provided. It is therefore necessary that it is linked to an expenditure slip issued by the provider from which it is possible to identify the essential data of the expenditure (date, name of the provider, route, consideration).
The Italian Tax Authorities confirmed that, once the procedure for the preservation of documents in electronic format is completed, it is possible to proceed with the destruction of any paper originals, pursuant to Article 4(3) of the Ministerial Decree of 17 June 2014.

CIRCULARS

✓ Instructions for completing the personal income tax return and affixing the seal of approval for fiscal year 2023 (Circular No. 12/E of May 31, 2024)

Circular No. 12/E dated May 31, 2024, issued by the Italian Tax Authorities addresses several queries posed by CAFs (Tax Assistance Centers) regarding the tax return of natural persons for fiscal year 2023. The main points covered are:

- Use of the 730 Simplified form: starting with the tax returns submitted in the year 2024, relating to the fiscal year 2023, individuals who do not have a VAT number and only have income other than employee income may use the 730/2024 form without a withholding tax agent;
- W section: this new section of the 730 form allows the declaration of foreign capital incomes;
- Seal of approval on the declaration: for revalued land in section L of the 730 form, the CAF or professional must retain the receipts of the tax payment and the sworn appraisals;
- Irpef deduction for energy-efficient homes and first home tax relief 'under 36': the two benefits are not cumulative. If a taxpayer benefited from the 'under 36' first home tax credit, the same taxpayer cannot claim for the 50% VAT deduction for the purchase of energy class A or B homes;
- Late Certifications and self-regularization: in case of late filing of the CUs, the violation may be regularized through the institution of self-regularization (“ravvedimento operoso”). The penalty is not applicable if the filing occurs within five days of the deadline and is reduced to one third if the delay does not exceed sixty days.

✓ News on the regulation of capital gains resulting from the transfer of real estate affected by Superbonus interventions and of the change in the status of the assets (Circular No. 13/E of June 13, 2024)

Circular no. 13/E, dated June 13, 2024, issued by the Italian Tax Authority clarifies the new rules introduced by Law no. 213 of 30 December 2023 ("Budget Law 2024") concerning the capital gains arising from the transfer of real estate subject to Superbonus interventions. The new rules, effective on sales from 1 January 2024, include the capital gain among others income if the sale takes place within 10 years from the end of the works.
The Italian Tax Authority specifies that the capital gain concerns all buildings, except those received by inheritance or used as the main residence for most of the 10 years preceding the transfer, regardless of whether the interventions were carried out by the owner or by others entitled to the deduction.
Furthermore, it is highlighted that the legislation does not consider relevant neither the deduction percentages nor the way in which the Superbonus is used to be relevant.
In particular, the capital gain is realized only for the first sale for consideration within 10 years from the end of the interventions, excluding any subsequent transfers.
Regarding the computation of the capital gain, this is based on the difference between the consideration received and the purchase price or the construction cost, including the inherent costs. If the sale takes place within 5 years from the end of the interventions and invoice discount or assignment of credit options have been used, the expenses of the work cannot be recognized as a price increase. Beyond 5 years, 50 per cent of the costs incurred is taken into account.

✓ Measures on first home relief under 36 (Circular No. 14/E of June 18, 2024)

Circular no. 14/E dated June 18, 2024, issued by the Italian Tax Authority clarifies the tax relief provided for in Article 64, paragraphs 6-11, of Decree-Law no. 73 of 25 May 2021 (exemption from deed taxes) as amended by Article 3 of Decree-Law no. 215 of December 30, 2023 ("Milleproroghe Decree"), for the purchase of a first home by individuals under 36 and with an ISEE (Equivalent Economic Situation Indicator) not exceeding Euro 40,000. The deadline for the purchase is extended to December 31, 2024, provided that the preliminary deed has been registered by December 31, 2023. In particular, the mere stipulation of the preliminary contract in 2023 is not sufficient if the registration takes place in 2024. Moreover, the benefit does not apply in cases of real estate auction award in 2023 with the transfer decree issued in 2024.
Moreover, Article 3, paragraph *12-quaterdecies* of the Milleproroghe Decree introduces a tax credit for deeds subject to VAT, for an amount equal to the taxes paid in excess compared of those that would have been due pursuant to paragraph 12-terdecies of the aforementioned Article 3, for definitive deeds stipulated between January 1, 2024, and February 29, 2024. In order to access the benefit, the taxpayer must declare to the notary the intention to take advantage of it and prove meeting the ISEE requirements required by the law.
The age requirement (under 36 years) and income requirement (ISEE not exceeding Euro 40.000) must be verified as of the date of the definitive deed.
The Italian Tax Authority specifies that the tax credit concerns registration taxes (including any tax paid for down payments or deposits on the preliminary contract), cadastral taxes and VAT, as well as the substitute tax on mortgages. Furthermore, this credit can only be used in the period between January 1, 2025, and December 31, 2025 and, in the event of non-utilization, reimbursement of excess amounts paid will not be permitted.

✓ Synthetic indexes of tax reliability - fiscal year 2023 (Circular No. 15/E of June 25, 2024)

Circular No. 15/E dated June 25 2024, issued by the Italian Tax Authority deals with the synthetic indices of tax reliability ('ISA') for fiscal year 2023 and comments on regulations that have influenced the ISA, such as Legislative Decree No. 1 of January 8, 2024, which introduces simplifications in tax compliance.
The ISA 2024 form retain the consolidated structure, with the addition of a new field to prevent anomalies in the application of indicators. The ISA reward system provides for an increase in the thresholds for exemption from the seal of approval for VAT credits and direct tax credits, graduated according to the levels of tax reliability obtained. Taxpayers with an ISA score of at least 9 can access the bonus benefits without a seal of approval for credits up to Euro 70,000 for VAT and Euro 50,000 for direct taxes.
Further clarifications are provided on specific aspects, such as the exclusion from the application of ISAs for the start of agritourism activities, distinguishing between agricultural and business income. The Circular concludes with a review of the reference rules and practices related to the ISA.

✓ Changes to the procedures for offsetting credits under Article 17 of Legislative Decree No 241 of July 9, 1997 (Circular No 16/E of June 28, 2024)

Circular No. 16/E dated June 28, 2024, issued by the Italian Tax Authorities provides operational guidance on the new provisions regarding credit offsetting introduced by the Budget Law 2024 and by Article 4, paragraphs 2 and 3, of Decree-Law No. 39 of March 29, 2024. These new rules, effective from July 1, 2024, pertain to:

- the obligation to use only the telematic services provided by the Italian Tax Authorities in the event that the payment authorizations contain offsets of any kind;
- the exclusion from the right to use 'horizontal' offsetting for taxpayers who have outstanding debts assigned to collection agents exceeding Euro 100.000.

Until June 30, 2024, payment authorizations containing credits to be offset against debts were submitted or transmitted as follows:

- exclusively through the telematic services made available by the Italian Tax Authority, if the final balance was zero (F24 with a zero balance)
- through the telematic services made available by collection intermediaries affiliated with the Italian Tax Authorities (banks, post office, etc.), if the final balance is positive (F24 with a positive balance).

From July 1, 2024, on the other hand, all payment authorizations containing credits to be offset, regardless of their nature or type, including those with a positive balance, must be transmitted exclusively through the telematic services made available by the Italian Tax Authorities. This novelty concerns all offsets, both horizontal (or 'external') and 'vertical' (or 'internal'), as well as those including credits accrued against INPS (The National Institute for Social Security) and INAIL (The National Institute for Insurance against Accidents at Work).

The Budget Law 2024 and then the Decree on Incentives amended Article 37 of Decree-Law No. 223 of July 4, 2006, introducing the new paragraph *49-quinquies*. According to this new provision, in force from July 1, 2024, the option to avail of "horizontal" offsetting is excluded if, at the date of transmission of the payment authorization containing the offset, the taxpayer has a total amount of outstanding debts assigned to the collection agent exceeding Euro 100.000.

The total settlement of the debts, or the reduction of the total amount thereof to an amount of Euro 100.000 or less, entails the re-establishment of the right to offset tax credits. For this purpose, in addition to the payment (even partial) of the aforementioned debts and the administrative or judicial suspension of those subject to litigation, also the granting, by the tax collection agent, of an instalment plan aimed at extinguishing such debts, until such time as the debts are no longer subject to the relevant benefit, as well as the use of offsetting with tax credits, pursuant to Article 31, paragraph 1, fourth sentence, of Decree-Law No. 78 of May 31, 2010.

For the purposes of exclusion, the Italian Tax Authorities may avail themselves of the procedures for suspending the execution of payment authorizations as outlined in paragraphs *49-ter* and *49-quater* of Article 37 of Decree-Law No 223 of July 4, 2006.

CASE LAW UPDATE

✓ Failure to carry out an assessment - Effects (Supreme Court, Judgment No. 15436 of 3 June 2024)

The Supreme Court, in its Judgment No. 15436/2024, ruled that the inspection and documentary control activities that remained at the mere preliminary investigation stage and did not result in an assessment notice, could not preclude a further inspection, with a different assessment and subsequent issuance of an assessment notice, the validity of which is not affected by the emergence of "new elements" required by Art. 43, paragraph 4, and 57, paragraph 4, of the VAT Decree, but only in the different hypothesis of supplementing or increasing adjustments, by means of a new notice, an assessment already made.

✓ Asset management company (so-called SGR) - Liability for VAT debt relating to the extinguished investment fund (Supreme Court, Judgment No. 16285 of 12 June 2024)

The Supreme Court, in its Judgment No. 16285/2024, ruled that, in the event of the extinguishment of an investment fund, the SGR, which managed that fund, cannot be directly liable for the non-payment of VAT, unless the Italian Tax Authorities claim for an independent liability.

Accordingly, the SGR is not liable with its own assets, either subsidiarily or severally, for any VAT debts on the investment fund that has been extinguished. In fact, the SGR is the taxpayer from a merely formal point of view whereas, from a substantive point of view, it is the investment fund with its own independent assets that is liable for the VAT.

EUROPEAN UNION

- ✓ **A group company that processes the goods of the foreign parent company does not qualify a permanent establishment for VAT purposes (EU Court of Justice, No. C - 533/22 of 13 June 2024)**

The EU Court of Justice, in its Judgment in Case C-533/22, clarified that Art. 44 of Directive 2006/112, as amended by Directive 2018/1695, and Art. 11 of Implementing Regulation no. 282/2011 need to be interpreted as meaning that, for the purposes of the determination of the place of supply of services, it is not relevant to establish that a company has a permanent establishment in a Member State (i) neither the fact that a VAT-registered company which has its place of business in a Member State, which is the beneficiary of processing services supplied by a company established in another Member State, has in the latter Member State an establishment involved in the supply of the finished products resulting from those processing services, (ii) nor the fact that those supply transactions are for the most part carried out outside that Member State and that those transactions carried out there are subject to VAT.

ASSONIME

- ✓ **Circular No. 12/2024 - 2024 Income and IRAP tax Returns and related payments**

Circular No. 12/2024 covers some relevant topics in view of the preparation of the Income Tax Return form REDDITI SC 2024 and IRAP tax Return form IRAP 2024.
The Circular focuses on the new features introduced with reference to the deadlines and methods of IRES and IRAP payments, as well as on certain practice documents that have attracted particular interest, for example, with reference to the ACE and Super ACE rules, the tax treatment of transaction costs connected to reorganization transactions, and the tax treatment of accounting errors.
With particular reference to the deadlines for the filing of the returns, it should be noted that the Compliance Decree provided for the anticipation, as of 2 May 2024, of the deadline for the filing of the Income Tax Return and IRAP Return (i) from 30 November to 30 September for taxpayers with fiscal year coinciding with the calendar year and (ii) from the last day of the eleventh month following the end of the fiscal year to the last day of the ninth month following the end of the fiscal year for taxpayers with a fiscal year not coinciding with the calendar year. Exclusively for the fiscal year as of 31 December 2023, Article 38 of Legislative Decree No. 13 of 12 February 2024 postponed these deadlines (i) to 15 October 2024 for taxpayers with a fiscal year coinciding with the calendar year and (ii) to the fifteenth day of the tenth month following the end of the fiscal year for taxpayers with a fiscal year not coinciding with the calendar year.
The previous submission deadlines remain in force for taxpayers with a fiscal year that does not coincide with the calendar year, for whom the filing deadline for the returns relating to the fiscal year preceding the one in course on 31 December 2023 expires after 2 May 2024.

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