FIVERS

Tax Update

July 2024

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REGULATORY UPDATE

✓ Corporate sustainability due diligence - Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024

On 5 July 2024, Directive (EU) 2024/1760 of the European Parliament and of the Council, dated 13 June 2024, aiming to promote a fairer and more sustainable global economy and placing specific responsibilities on corporate governance bodies for the protection of human rights and the environment, amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, was published in the Official Journal of the European Union L Series. The Directive came into force on 25 July 2024 and states:

1) obligations of companies with respect to negative impacts on human rights and the environment, resulting from their activities, the activities of their supply chains and their business partners;
2) liability for breaches of these obligations;
3) obligations for companies to adopt a transition plan for climate change mitigation in order to align their business model with the Paris Agreement and the transition to a sustainable economy.

✓ Global Minimum Tax: implementing provisions (Ministerial Decree 1 July 2024)

The Ministerial Decree of 1 July 2024, published in the Official Gazette No. 159 of 9 July 2024, supplements the national regulatory framework on the global minimum tax and defines the implementation of the Qualified Domestic Minimum Top-up Tax ('QDMTT'), defined as the national minimum tax by Article 18 of Legislative Decree No. 209 of 27 December 2023.

This tax applies to multinational and domestic groups as of the financial years starting on or after 31 December 2023. The Decree specifies that the QDMTT, applied in priority to the minimum supplementary tax (IIR) and the supplementary minimum tax ("UTPR"), concerns Italian companies belonging to groups with annual consolidated revenues of EUR 750 million or above, regardless of the shareholding in the taxpayers, which pay an effective income tax rate ("ETR") lower than 15%. The tax can be deducted from the minimum supplementary tax due in Italy.

The Decree provides guidance as to the method of calculating the tax and the criteria for imputation of the tax by providing for a regime of joint and several liability among the companies of the group located in Italy, it being understood that the group is in any case required to identify the liable party and to establish the allocation of the relative burden among the companies located in Italy.

✓ Cohesion policy Decree (Law No. 95 of 4 July 2024)

Law No. 95 of 4 July 2024, published in the Official Gazette No. 157 of 6 July 2024 and in force since 7 July 2024, converted with amendments Law Decree No. 60 of 7 May 2024, containing urgent measures on cohesion policies, which provided, among the other, for contribution relief for young people starting work, with the aim of boosting employment, including through economic aid for the start-up of entrepreneurial, self-employment and professional activities.

Among the main measures introduced during conversion,

(i) with reference to the tax credit for investments in the ZES Unica del Mezzogiorno, as provided for by Article 16, paragraph 2, Decree-Law No. 124 of 19 September 2023, in the context of the Zone Logistiche Semplificate ("ZLS"), the provision that excluded the applicability of the benefit to companies operating in the ZLS established pursuant to Article 1, paragraph 62, of Law No. 205 of 27 December 2017 has been eliminated;

(ii) provision has been made for the extension of the FTAs in the Regions in transition not included in the Single ZES of the Mezzogiorno, so that the benefit is also applicable in relation to the port areas of these Regions in transition. The definition of the procedures is postponed to the issuance of a Decree to be issued soon;

(iii) In relation to the social security cushion disbursed by INPS in favour of self-employed workers who are obliged to pay contributions to the INPS Separate Sections, it has been provided that the disbursement takes place if the request is accompanied by the participation of the beneficiaries in professional refresher courses (Article *17-bis*, Decree-Law No. 60 of 7 May 2024);
(iv) the regulations relating to the tax credit for Transition 5.0 investments (Article 38, paragraph 5, Decree-Law No. 19 of 2 March 2024) were amended, providing that investments in new capital goods aimed at the self-production of energy from renewable sources for self-consumption, including remote consumption, as referred to in Article 30, paragraph 1, letter a), number 2), Decree-Law No. 199 of 8 November 2021, are also eligible for the bonus.

✓ Approval of the Legislative Decree containing 'Provisions for the reorganisation of the national tax collection system' (Council of Ministers on 3 July 2024)

The Government on 3 July 2024 approved the tax collection reform Legislative Decree.
Among the main changes introduced are those related to the deferment of amounts entered on the tax rolls. It has been confirmed that requests for deferment of amounts up to €120,000 do not need to prove temporary economic difficulty. Moreover, the possibility of deferring the debt up to 120 monthly instalments is introduced, with a payment plan that will gradually increase over the years, depending on whether the debtor is in a state of financial difficulty. An additional decree will define the criteria for demonstrating economic difficulty, adopting those already used by the Italian Tax Authorities-Collections (such as the ISEE index for individuals and the liquidity index for companies). These changes will apply to deferment requests submitted from 1 January 2025.
Also new is the possibility of an appeal against the excerpt from the role. Precisely, it is the appeal against the payment slip that has not been validly served, which is known by means of the extract from the role issued by a tax officer. The decree broadens the cases in which the non-notified payment slip can be appealed, including cases in which the charge may cause prejudice:
(i) in the procedures under the Business Crisis and Insolvency Code (Legislative Decree No. 14 of 12 January 2019);
(ii) in connection with financing transactions by authorised parties;
(iii) in the context of the transfer of the business, as provided for in Article 14 of Legislative Decree No. 472 of 18 December 1997.

A further review of the Decree was necessary by the Government on 22 July, to make an amendment regarding the collection by securitisation of the discharged sums, in response to an onerous remark by the Department of the State General Accounting Office, following which the Decree was finally approved.

✓ Preliminary approval of the Consolidated Texts of the tax delegation process (Council of Ministers of 22 July 2024)

On 22 July, in the implementation of the tax delegation process, the Government preliminarily examined three Consolidated Texts affecting tax, administrative and criminal sanctions, minor taxes, and tax justice.

The Consolidated Text on “tax, administrative and criminal sanctions” aims to organise existing rules by homogeneous sectors, updating the sectoral single texts and coordinating provisions with European Union legislation. Incompatible or outdated provisions will be repealed.
In the Text will be collected:
(i) the general principles and penalty provisions contained in Legislative Decrees 471 and 472 of 1997;
(ii) tax laws on registration, mortgage, cadastral tax, inheritance, donations, stamp duty, government concession, private insurance and life insurance contracts, entertainment tax, RAI licence fee;
(iii) the criminal provisions on tax matters and the regulation of income tax and value added tax offences set out in Legislative Decree 74 of 10 March 2000.

The Consolidated Text on “minor taxes” will bring together the provisions regarding each tax and the rules for compliance and payments, while the rules on assessment and penalties will be included in other unified texts. The rules on the tax on the value of real estate abroad (IVIE), the tax on financial transactions (Tobin Tax) and the tax on digital services will also be included in this text.

The Consolidated Text on “tax justice” is divided into two parts relating respectively to the organisation of tax jurisdiction and the provisions on tax proceedings.

✓ Two-year composition agreement: methodology note for application to taxpayers under the flat-rate regime - (Ministerial Decree 15 July 2024)

The Ministerial Decree of 15 July 2024 was approved and published in the Official Gazette No. 167 of 18 July 2024. It contains methodological notes for the formulation of the proposed two-year composition agreement for tax payers in the flat-rate regime, which is applicable on an experimental basis only for the year 2024.
The Italian Tax Authorities has also made available the software to process the 2024 proposal of agreement. Finally, the LM framework, Section VI of the 2024 income tax Form (*Redditi PF*) has been updated to communicate the intention to adhere to the proposal of agreement (line LM64).

✓ Tax Assessment - Checks on economic activities: implementation of simplifications (Legislative Decree No. 103 of 12 July 2024)

Pursuant to Article 1, paragraphs 634-636, of Law No. 190 of 23 December 2014, the procedures have been established by which information regarding anomalies found in the annual VAT return for the 2021 tax period is provided to VAT taxable persons.
The communications are aimed at encouraging spontaneous compliance. The anomalies reported concern inconsistencies (and possible irregularities) arising from the comparison between the amount of VAT transactions reported to the Italian Tax Authorities (electronic invoices and daily receipts stored) and the amount declared in the annual VAT returns submitted by the taxpayer.

✓ Further extension for the two-year staff situation report (Minister of Labour Decree 2 July 2024)

By Decree of the Minister of Labour, in agreement with the Minister for Family, Birth and Equal Opportunities, dated 2 July 2024, the deadline for the submission of the two-yearly report (2022/2023) on the situation of female and male employees by public and private companies with more than 50 employees, pursuant to Article 46 of Legislative Decree No. 198 of 11 April 2006, is further postponed to 20 September 2024, following updates to the software to be used for the application.

✓ No profit Sector (Law No. 104 of 4 July 2024)

Law No. 104 of 4 July 2024 (published in the Official Gazette No. 168 of 3 July 2024) contains provisions amending and supplementing the No profit Sector Code.
Novelties include:

(i) raising the minimum limit for the preparation of the cash flow statement;
(ii) the deadlines for submitting the accounts/balance sheets to RUNTS, which must be done within 180 days after the end of the financial year;
(iii) the new thresholds (of assets, revenues and number of employees) for the appointment of the statutory auditors board and the accounting auditors;

(iv) the provisions for conducting meetings remotely (participation in the meeting by means of telecommunications and the possibility of casting votes electronically, provided that the identity of the participating member can be verified), which is always admitted unless expressly prohibited in the articles of association or bylaws of the entity.

✓ Competition Bill ('*DDL Concorrenza*')

At its meeting of 26 July 2024, the Government, upon proposal of the Minister of Enterprise and Made in Italy and the Minister of Infrastructure and Transport, approved, among others, the annual market and competition bill, which intervenes to remove regulatory obstacles to the opening of markets, to promote the development of competition and to ensure consumer protection, also in application of the principles of European Union law on free movement, competition and the opening of markets, as well as European competition policies.
The DDL is fully within the framework of the measures implementing the PNRR plan. The annual approval of a 'Competition Law', in fact, is conditional on the allocation of the funds provided for in the Plan. The measure consists of three parts:

(i) measures concerning motorway concessions;
(ii) measures in the areas of price discovery and trade customs, insurance, transport and trade;
(iii) start-up measures.

✓ Collaborative Compliance and Two-year composition agreement (Council of Ministers of 26 July 2024)

On 26 July 2024 the Government preliminarily approved the correctives to the tax reform, including those affecting Legislative Decree No. 13 of 12 February 2024 referred to the two-year composition agreement and Legislative Decree No. 221 of 30 December 2023 on collaborative compliance. The corrective measures were incorporated into Legislative Decree No. 108 of 5 August 2024, published in the Official Gazette No. 182 of 5 August 2024 and in force as of 6 August 2024.
The corrective changes in the field two-year composition agreement include:

(i) 31 October deadline: possibility to file the 2024 tax return until 31 October 2024 (with a postponement of 15 days compared to the previously scheduled 15 October date). The same deadline is provided for the acceptance of the two-year composition agreement;
(ii) rates: normal rates apply to the taxable income agreed with the Italian Tax Authorities, or the application of the substitute tax ('flat tax') for taxpayers under the flat-rate regime. A new incentive mechanism has also been introduced, i.e. the application of more favourable rates on the additional income to be declared requested by the Italian Tax Authorities to adhere to the two-years agreement.

Among the corrective changes affecting the collaborative compliance are:

(i) definition of reminder notices: extension from 30 to 60 days to provide the clarifications requested in reminder notices or to pay the amounts requested by the Italian Tax Authorities for notices to be issued from next year;
(ii) Quater scrapping: extension for the payment of the fifth instalment to 15 September 2024.

MINISTERIAL PRACTICE

REPLIES TO REQUESTS FOR ADVANCE TAX RULING

✓ ***Carried interest*** **regime - Article 60, paragraph 1, Decree-Law No. 50/2017 (Reply to the request for advance tax ruling No. 143 of 3 July 2024)**

The Italian Tax Authorities, in the reply to the request for advance tax ruling No. 143 of 3 July 2024, expressed their opinion on the scope of application of Article 60(1) of Decree-Law No. 50 of 24 April 2017. In particular, the provision at stake provides that the form of remuneration represented by '*carried interest*' is classified as capital income or miscellaneous income if the conditions set forth in the same article are met.
With particular reference to compliance with the requirement set forth in subparagraph (a) of paragraph 1, Article 60, of Decree Law No. 50 of 2017, i.e., the commitment of a minimum investment by holders of enhanced capital rights, the Tax Authorities noted that, on the basis of the Applicants' assertions, if only the stake held by the Claimants in *carried* shares were considered, this requirement would no longer be supplemented following the capital increase. However, considering that Paragraph 3 of the provision under review allows, for the purpose of determining the 1% threshold, to also consider the amount subscribed in shares without enhanced equity rights, and taking into account that one of the Applicants also indirectly holds shares of the parent company without enhanced capital rights, the minimum investment requirement can be considered to be supplemented. Therefore, any income from the ownership of the shares *carried* in the hands of the Applicants will fall into the category of income of a financial nature.

✓ **Non-resident tax payer - VAT refund on supplies - Opening of VAT registration with retroactive effect - Article *38-bis2* of Presidential Decree No 633/1972 (Reply to the request for advance tax ruling No. 147 of 11 July 2024)**

The Italian Tax Authorities, in the reply to the request for advance tax ruling No. 147 of 11 July 2024, expressed their views on the correct procedure to be adopted in order to obtain a refund of the VAT credit generated as a result of supplies carried out in Italy.
In particular, in the case of a non-established taxable person without VAT identification in Italy who did not timely apply for a refund through the 'electronic portal' " according to art. 38–*bis*2 of D.P.R. n. 633/1972, the Italian Tax Authorities denied the applicability of the so-called “special refund” (now governed by Article *30-ter* of Presidential Decree No. 633 of 26 October 1972) through a retroactive attribution of the Italian VAT number. In the case at stake, the retrospective request of the VAT number had not been made within a "reasonable period of time" (see, in this regard, Supreme Court No. 2746 and 2756 ofJanuary30, 2023, which incorporate the principles expressed on the recognition of the right to deduction by the Court of Justice's ruling of October 21October 2010, in Case C-385/09, *Nidera Handelscompagnie BV).*

✓ **Transfer of tangible and intangible assets - previous intra-Community acquisition of assets - value added tax - registration tax (Reply to the request for advance tax ruling No.149 of 11 July 2024)**

The Italian Tax Authorities, in the reply to the request for advance tax ruling No. 149 of 11 July 2024, expressed their opinion on the requirements for the configuration of a business transfer, examining in the case at hand the transfer of a complex represented by intangible assets, held by the Applicant in its own right, and tangible assets acquired by a subsidiary - by an intra UE acquisition - at a time immediately prior to the proposed transfer.
According to the Inland Italian Tax Authorities, among the tangible and intangible assets transferred as a whole there is not to be found that “functional and organisational connection” by the entrepreneur to which Article 2555 of the Civil Code and the national and Unional case laws refer to. Therefore in this case the tangible and intangible assets transferred cannot be considered as a whole organically aimed at the exercise of specific business activities qualifying as a “going concern”, and therefore the exclusion regime

for VAT purposes under Article 2, paragraph 3, letter b), of Presidential Decree No. 633 of 26 October 1972 cannot be applied.

- ✓ **Substitute tax on financing - Articles 15 et seq. of Presidential Decree No. 601 of 29 September 1973 - Financing transaction formed abroad and deed of mortgage securing the financing entered into in Italy (Reply to the request for advance tax ruling No.150 of 11 July 2024)**

In their reply to the request for advance tax ruling No. 150 of 11 July 2024, the Italian Tax Authorities expressed their views on the application of the substitute tax on loans. In particular, they stated that the substitute tax on medium- and long-term loans pursuant to Articles 15 and 17 of Presidential Decree No. 601 of 29 September 1973 may also be applied with respect to the guarantees inherent in the loan agreement only provided that the conditions for the application of the tax relief are met with respect to the granting of the credit upstream.
In the case at hand, a company incorporated under German law, after having entered into a financing agreement in Germany for the purchase of real estate located in Italy, asked for the possibility of applying the 0.25% substitute tax to the deed of voluntary mortgage to be entered into in Italy for registration in the real estate registers.
The Italian Tax Authorities, after having noted that medium and long-term financing contracts can benefit from the substitute tax only if concluded in Italy, answered with a negative reply as the requirements for the application of the benefit were not met.

- ✓ **Conversion of the performance bonus into contributions to supplementary pension schemes - Article 1, paragraph *184-bis*, of Law No. 208 of 28 December 2015 - Communication to the supplementary pension scheme of the amount (Reply to the request for advance tax ruling No.154 of 15 July 2024)**

The Italian Tax Authorities in the reply to the request for advance tax ruling No.154 of 15 July 2024, clarified that in the event of conversion of the performance bonus into contributions to supplementary pension schemes, where it is the employer the one who provides for the required communication to the pension fund in place of the employee, the latter is exempt from this obligation.
It is also recalled that, pursuant to Article 1 paragraph *184-bis* of Law No. 18 of 28 December 2015, contributions to supplementary pension schemes paid in lieu of the performance bonus do not contribute to the formation of the IRPEF taxable base for the employee.

- ✓ **Solidarity contribution, the revaluation reserve is relevant for the limit of 25% of the net assets (Reply to the request for advance tax ruling No. 158 of 18 July 2024)**

The Italian Tax Authorities In the reply to the request for advance tax ruling No. 158 of 18 July 2024, provided clarifications on how the solidarity contribution introduced by Article 1, paragraphs 115 to 119 of Law No. 197 of 29 December 2022 should be determined, confirming in particular that the positive balance of the revaluation carried out pursuant to Article 110 of Decree-Law No. 104 of 14 August 2020, with tax recognition and franking of the reserve, should be taken into account for the calculation of equity, including for the portion corresponding to depreciation not yet made.

- ✓ **Special regime for impatriated workers (“*impatriati”)* under Article 16 of Legislative Decree No. 147 of 14 September 2015 – individual who, upon return, took benefit from the optional substitute taxation regime for new residents under**

Article *24-bis* of the TUIR (Reply to the request for advance tax ruling No.159 of 22 July 2024)

The Italian Tax Authorities, In the reply to the request for advance tax ruling No 159 of 22 July 2024, admitted the possibility for an Italian citizen, who returned to Italy from the United States in 2019 benefiting from the regime of newly domiciled persons (art. *24-bis* of the TUIR), to revoke the latter and access the regime of "*impatriati"* (art. 16 of Legislative Decree No. 147 of 14 September 2015) and its extension for a further five years (art. 5, paragraph *2-bis* of Decree-Law No. 34 of 30 April 2019).
It is recalled that Article 1, paragraph 154, of Law No. 232 of 11 December 2016 establishes that the two aforementioned facilitating regimes cannot be combined; however, as clarified by Italian Tax Authorities Circular No. 17 of 23 May 2017, the alternative use of the aforementioned regimes in different tax periods is not excluded, subject to the objective and subjective prerequisites required by the law.

✓ Reorganisation by way of contribution under controlled realisation regime pursuant to Article 177, paragraphs 2 and *2-bis*, of the TUIR (Reply to the request for advance tax ruling No. 160 of 22 July 2024)

In the reply to the request for advance tax ruling No. 160 of 22 July 2024, the Italian Tax Authorities clarified that the following sequence of transactions does not constitute abuse pursuant to Article *10-bis* of Law No. 212 of 27 July 2000:

(i) joint contribution by four individual shareholders of the 25% shareholdings they each hold in a operating joint-stock company in a newly incorporated holding company, under a "controlled realisation regime" pursuant *to* Article 177(2) of the TUIR;
(ii) the contribution by each individual shareholder of the shareholding held in the holding company to a newly formed personal holding company under a "controlled realisation regime" pursuant *to* Article 177(*2-bis*) of the TUIR.

On the other hand, the Italian Tax Authorities has specified that an abuse could arise where the holding company set up by the first contribution sells the participation in the operating company, benefiting from the participation exemption regime pursuant *to* Article 87 of the TUIR once the 12-month holding period has elapsed, as this could lead to the avoidance of Article 177, paragraph *2-bis*, of the TUIR, which extends the holding period up to the 60th month preceding the month in which the transfer of the participation took place.

RESOLUTIONS

✓ Establishment of tax codes

With Resolution 35/E of 11 July 2024, the Italian Tax Authorities establishes the tax codes for the payment, by means of the F24 form, of the sums due as a result of control activities, judicial conciliation and the submission of petitions for tax amends and tax settlement, in relation to the registration of deeds.

With Resolution 38/E of 22 July 2024, the Italian Tax Authorities establishes the tax codes for the payment, through the F24 form, of the amounts due for forfeiture of tax benefits in favour of companies starting a new economic activity in Special Economic Zones (ZES) pursuant to Article 1, paragraphs 173 to 176, of Law No. 178 of 30 December 2020.

With Resolution No. 39/E of 22 July 2024, the Italian Tax Authorities instituted the tax codes for the use, through the F24 form, of the tax credit for investments in the Special Economic Zone for Southern Italy ('ZES Unica'), referred to in Article 16 of Decree-Law No. 124 of 19 September 2023.

- ✓ **Allowances paid by way of redundancy incentive and by way of settlements- Applicability of the special regime for "*impatriati*" workers under Article 16 of Legislative Decree No. 147 of 2015 (Italian Tax Authorities Resolution 40 of 23 July 2024)**

The Italian Tax Authorities admits the possibility of benefiting from the special regime for "*impatriat"i* also with reference to the amounts received in respect of a settlement agreement for the consensual termination of the employment contract (exit incentives and settlement amounts).
Such sums are subject to separate taxation *pursuant to* Articles 17 and 19 of the Consolidated Income Tax Act (TUIR) up to €1,000,000, without prejudice to their concurrence in the formation of the overall income for the year of receipt, where this is more favourable to the taxpayer. The "*impatriati"* regime applies to income that ordinarily form the total income.

ORDERS

- ✓ **Data declared for ISA purposes for the three-year period 2020, 2021 and 2022 - Anomaly notifications (Order No. 281202 of 1 July 2024)**

With Order No. 281202 of 1 July 2024, the Italian Tax Authorities has circumscribed the types of anomalies in the data declared for the purposes of ISA for the three-year period 2020 - 2022, upon the occurrence of which a special notice is sent to the taxpayer in the Taxpayer's File. The notifications concern inconsistencies in the use of the causes of exclusion from the ISA, misalignments between the data contained in the ISA forms and in those of the Single Certifications or the Income Tax Forms, as well as anomalies in the inventory data. Using the software to be released by the Italian Tax Authorities, clarifications and explanations can be provided with respect to the anomaly detected, with the possibility of rectifying errors and omissions.

- ✓ **VAT return for 2021 - Taxable sales and purchases subject to reverse charge - Data transmitted electronically - Communication of warning reports (Order No. 295324 of 15 July 2024)**

By Order No. 295324 of 15 July 2024, the Italian Tax Authorities announced that certain taxpayers will receive communications of warning reports referred to anomalies found matching the data in the annual VAT return for the tax period 2021 and those transmitted to the SdI pursuant to Articles 1 and 2 of Legislative Decree No. 127 of 5 August 2015 (electronic invoices) and Article 1 of Law No. 244 of 24 December 2007 (electronic invoices to the PA).
The communications will be delivered to the taxpayer's digital domicile and will also be made available in its "tax box" ("cassetto fiscale") or in the reserved area of the "invoices and considerations" portal of the Tax Authorities. The addressee (also through an intermediary appointed *pursuant to* Article 3(3) of Presidential Decree No. 322 of 22 July 1998) may request information or report to the Italian Tax Authorities any elements, facts and circumstances not known to it. It is also possible to regularise errors or omissions by resorting to the "voluntary amendment" procedure *pursuant to* Article 13 of Legislative Decree No. 472 of 18 December 1997.

- ✓ **Identification of the tax credit for investments in the Special Economic Zone for the Mezzogiorno, referred to in Article 16 of Decree-Law No 124 of 19 September 2023 (Order No 305765 of 22 July 2024)**

With Order No. 305765 of 22 July 2024 the Italian Tax Authorities announced the percentage of the tax credit for investments in the Special Economic Zone for the Mezzogiorno – ZES Unica- that can actually

be recovered by each beneficiary. This is the contribution in the form of tax credit intended for companies making investments in the period between 1 January and 15 November 2024, for the acquisition of capital goods intended for production facilities located in the ZES Unica (Article 16 of Decree-Law No. 124 of 19 September 2023).
The percentage, determined in the measure as 17.6668% of the bonus requested, is in line with the provisions of the same decree that introduced the credit (Decree-Law No. 124 of 19 September 2023). This percentage is obtained from the ratio between the spending limit and the amount of bonuses related to validly submitted requests. Finally, it has been clarified that each beneficiary will be able to know the bonus available through its "tax box" ("cassetto fiscale") accessible from the reserved area of the Italian Tax Authorities' website.

✓ Tax credit granted in case of subsidised loans for the flood in Emilia-Romagna - Implementation provisions (Order 25 July 2024 n. 312076)

The Italian Tax Authorities, with Order No. 312076 of 25 July 2024, has defined the procedures for the use of the tax credit granted in the event of access to subsidised loans, granted pursuant to Article 1, paragraphs 436-438, of Law No. 213 of 30 December 2023, following the flooding events occurring on or after 1 May 2023 in Emilia Romagna.
According to the Order, the tax credit is used by the beneficiary of the financing to pay the repayment instalments of the financing itself. It has been clarified that the financing entity recovers the amount through the institution of credit offsetting pursuant to Article 17 of Legislative Decree No. 241 of 9 July 1997 by means of F24 form, starting from the day following the due date of each instalment. Finally, it was clarified that the tax codes to be indicated in the F24 form will be established by a subsequent resolution of the Italian Tax Authorities.

CIRCULARS

✓ Article 1(59) of Law No. 213 of 30 December 2023 (Budget Law 2024) - Tax regime of capital gains from the disposal of qualified shareholdings realised by non-resident entities (Circular No. 17 of 29 July 2024)

Law No. 213 of 30 December 2023, among other provisions, by Paragraph 59 of Article 1, made changes to the tax regime of capital gains on qualified participations realised by non-resident companies and commercial entities. The Circular provides operational instructions to the Tax Offices, in order to ensure uniformity of action, concerning the changes introduced by the provisions of the above mentioned paragraph.
For the tax regulation of capital gains from the sale of shareholdings, reference is made, to the extent it is possible, to the previous practice documents issued by the Italian Tax Authorities. The clarifications do not take into account the possible applicability of double taxation treaties.

✓ IMU on real estate of non-commercial entities - clarifications (Circular No. 2/DF of 16 July 2024)

The Circular analyses the novelties introduced by Article 1, paragraph 71, of Law No. 213 of 30 December 2023 (Budget Law for the year 2024) on municipal tax on real estates (IMU) with respect to property used by non-commercial entities (ENCs) for the non-commercial performance of activities worthy of protection, pursuant to Article 1, paragraph 759, letter g), of Law No. 160 of 27 December 2019.
The clarifications provided supplement what is already reported in the instructions to the IMU declaration model, approved by Ministerial Decree of 24 April 2024, in order to ensure the widest dissemination of the application aspects of the new tax provisions.

CASE LAW UPDATE

✓ Car costs deductible for IRAP purposes (Supreme Court, Judgment No. 11791 of 2 May 2024)

The Supreme Court, in its ruling No. 11791/2024, confirmed the inapplicability, for IRAP purposes, of Article 164 of the TUIR, which sets limits on the deductibility of costs relating to motor vehicles, for the purpose of calculating the net production value of legal entities and partnerships that have opted to calculate the regional tax on the basis of the balance sheet.

✓ Credit for research and development to be listed in Section RU of Form Redditi SC (Supreme Court , Judgement No. 18028 of 1 July 2024)

The Supreme Court, in ruling No. 18028/2024, reiterated that the tax credit for research and development under Law No. 296 of 27 December 2006 that is not indicated in section RU of the REDDITI SC form, to the extent that the expenses have been incurred, must be deemed not to be due and not non-existent.
Therefore, the recovery notice served within the broader eight-year statute of limitation period, limited to cases of non-existence of the claim, must be annulled.

✓ VAT - Raising of the credit offsetable threshold (Supreme Court, Judgment No. 18377 of 5 July 2024)

The Supreme Court, in its judgment No. 18377/2024, stated that the increase in the maximum limit for tax credits and contributions that can be offset entailed a partial *abolitio criminis*, in that it affected the substantive case underlying the offsetting by broadening the lawfulness of the conduct, with the consequent application not of a principle of *favor rei in* the strict sense for the purposes of the penalty treatment, but rather directly of the retroactivity of the new rule.

✓ Sponsorship - Costs incurred in areas other than the area where the business is carried on (Supreme Court, Judgment No. 18726 of 9 July 2024)

The Supreme Court, in its ruling No. 18726/2024, reiterated that sponsorships of an amount not exceeding €200,000, if made to certain parties, constitute, for the donor, advertising expenses, by absolute presumption of law. Therefore, within this limit, both the inherence and the appropriateness of the expense must be considered.
It is also reiterated that the evolution of advertising techniques leads to the exclusion that, in today's 'globalised' market, there must be a territorial link between the advertising offer and the geographical area in which the undertaking carries out its activity in order for the requirement of inherent nature of advertising expenses to be met.

✓ Reverse charge - Non-existing transactions (Supreme Court, Judgment No. 18730 of 9 July 2024)

The Supreme Court, in Judgement No. 18730/2024, stated that, in the case of non-existing transactions, in order for the right to deduct under reverse charge to be exercised, it is necessary for the recipient to prove that he was not in a position to have knowledge that the invoice had not been issued by the real supplier, using the common diligence required of a trader in that sector.

✓ Residence of a legal entity - Place of effective management (Supreme Court, Judgment No. 20002 of 19 July 2024)

The Supreme Court, in Judgment No. 20002, confirmed that the residence of a company can be determined on the basis of the place of administration, which coincides with the place of effective management, i.e. the place where the administrative and management activities of the entity are effectively carried out.
This principle, introduced in Article 73(3) of the TUIR, is in continuity with international practice and the Conventions entered into by Italy.

✓ Unpaid import VAT - Confiscation (Supreme Court United Sections. Judgement. No. 18284 of 4 July 2024)

The United Sections of the Supreme Court, with Order No. 18284/2024, referred to the Constitutional Court the preliminary question on the applicability of customs confiscation to decriminalised smuggling conduct for failure to pay VAT on importation.
Specifically, the Customs Agency had served a non-EU taxpayer with a confiscation order pursuant to Article 301 of Presidential Decree No. 43 of 23 January 1973 ("TULD"), and had demanded the payment of VAT on importation, since the goods were not subject to duties. The United Sections, citing the case law of the European Union and of legitimacy, affirmed that VAT on importation is in no way assimilated to a customs duty, but that, on the contrary, by its very nature it is part of the general VAT system.
Therefore, they decided to refer the case to the Constitutional Court, considering that the combination of penalties, consisting of the application of confiscation in addition to the penalties, is, in itself, particularly severe and, in any case, stronger than what is provided for similar conduct both in domestic VAT and intra-EU VAT systems.

✓ Unfair invoice amount, effectively paid (Criminal Supreme Court, Judgement No. 26520 of 5 July 2024)

The Supreme Court, in its ruling No. 26520/2024, stated that the inclusion in the annual return of invoices issued in relation to transactions in which the goods or services listed in the invoice correspond to those sold or supplied, although bearing an unfair price but actually paid, does not constitute a fraud in the annual return by using invoices for non-existent transactions.
Such invoices, in fact, describe the transaction as effectively performed and, therefore, do not imply any divergence between the commercial reality and its documentary expression.

✓ Reverse charge – Omitted annual return (Supreme Court, Judgment No. 18416 of 5 July 2024)

The Supreme Court, in its Judgment No. 18416/2024, stated that with regard to the VAT reverse charge regime and penalties for violations of the relevant obligations, the introduction of the penalty provided for in paragraph 9-bis.2 of Article 6 of Legislative Decree No. 471 of 18 December 1997 for omitted invoicing, does not invalidate by speciality the penalty provided for in Article 5(4) of the aforesaid decree for omitted annual return, by reason of the difference between the two conducts affected and the absence of *idem factum*.

✓ Dual residence - Resolution of conflict in the absence of double tax treaties (Supreme Court, Judgment No. 19843 of 18 July 2024)

The Supreme Court, in its judgment No. 19843/2024, ruled that, in the absence of authentic interpretation rules, the new Article 2 of the TUIR, as amended by Article 1 of Legislative Decree No. 209 of 27 December 2023, applies to cases occurred on or after 1 January 2024, and not also to those happened previously and ascertained by the Office or dealt with in Court after that date.
The facts of the case related to a dispute on residence in the Principality of Monaco (Article 2, paragraph *2-bis*, of the TUIR) concerning the tax periods 2006-2010 with the consequent application of the wording of Article 2 in force until 2023, whereby the notion of tax domicile must refer to the civil law notion (Article 43 of the Civil Code) of the place where the person has established the "principal seat of his business and interests".

✓ Consulting services rendered by directors in favour of the administered company - Need for a resolution of the shareholders' meeting (Supreme Court, Orders nos 20591 and 20613 of 24 July 2024)

The Supreme Court, in Orders nn. 20591 and 20613/2024, confirmed that fees paid to directors as remuneration for consulting services rendered in favour of the administered company, pursuant to specific contracts, are non-deductible in the absence of a prior shareholders' resolution, in the same way as fees paid for the specific office of director.

✓ The annual tax return is not omitted if only the front page is filled in (Supreme Court, Order No 21472 of 31 July 2024)

The Supreme Court, in its Order No. 21472/2024, ruled that a tax return submitted via computer link by the deadline is not omitted if only the front page is filled in, even for the purposes of the statute of limitation purposes. The filing of the tax return accepted by the computer system of the tax administration cannot therefore be considered omitted or null and void. The Supreme Court placed the onus on the tax administration to provide proof that the telematic service had generated the blocking error communication, in order to allow the taxpayer to send a second return amended by the error.

EUROPEAN UNION

✓ Professional attorney-client privilege - 'Intermediary' professionals - Provision of Article 8b(5) of Directive 2011/16/EU (DAC 6) (EU Court of Justice 29 July 2024 Case C-623/22)

In its judgment in Case C-623/22, the Court of Justice of the European Union clarified that only lawyers are among the "intermediary" professionals who may rely on professional secrecy under Article *8-bisb*(5) of Directive 2011/16/EU (so-called DAC 6), as amended by Directive 2018/822/EU.
The objective of the Directive is to allow Member States to react to the adoption by taxpayers of potentially aggressive tax mechanisms by imposing specific reporting obligations on intermediaries. These obligations, however, conflict with Article 7 of the EU Charter of Fundamental Rights where the intermediary is a lawyer. This principle does not apply to other professionals who, although they may be authorised by the Member States to provide legal representation, are not qualified as lawyers. For them, therefore, the reporting obligations imposed by the DAC 6 directive remain valid.

✓ Joint and several liability of the beneficiary - Liability elements - Definition - Environmental damage (EU Court of Justice 29 July 2024 Case C-713/22)

In its judgment in Case C-713/22, the Court of Justice of the European Union clarified that in the case of a partial demerger, the recipient company is jointly and severally liable with the demerged company for the latter's liabilities not attributed in the demerger plan even when they are not entirely certain and identified, provided that they arise from conduct of the demerged company prior to the demerger.
In the case at hand, it was held that the spun-off company was jointly and severally liable with the spun-off company for the environmental damage ascertained, assessed and defined after the spinoff, but arising from the spun-off company's conduct prior to the transaction, and it was also held that the interpretation was in accordance with Article 11 of the Treaty on the Functioning of the European Union (TFEU), which requires the integration of environmental protection requirements into the definition and implementation of EU policies.

OMBUDSMAN OF THE TAXPAYER

✓ Penalty clause in a contract with flat-rate withholding tax regime excluded from registration tax (Decree of the Ombudsman of Lombardy dated 23 July 2024 No. 2024/1968)

The Ombudsman ("*Garante del contribuente")* of Lombardy, with Decree No. 2024/1968, invited the Provincial Tax Office of Milan to cancel - by self-defence procedure, pursuant to (former) art. 13 of Law No. 212 of 27 July 2000, for lack of the tax requirement - the tax assessment notice by which registration tax had been claimed on the penalty clause attached to a rent agreement registered with the option for the flat-rate withholding tax regime.
As stated by the Supreme Court in its Judgment No. 30983/2023, the penalty clause, foreseen in the rent agreement, constitutes a merely incidental element of the agreement, which cannot be considered autonomously for the purposes of the application of registration tax.

ASSONIME

✓ Circular 13/2024 - Tax credit for investments in the Single Economic Zone (ZES)

The Circular analyses the rules governing the tax credit for investments in the Single Economic Zone (ZES) - which includes the Italian regions of Abruzzo, Basilicata, Calabria, Campania, Molise, Apulia, Sicily and Sardinia - pursuant to Article 16 of the so-called "Sud Decree'.
The credit mechanism is temporary, being aimed at providing incentives - in compliance with EU regulations on regional state aid - to companies that carry out investments in the period 1 January - 15 November 2024, forming part of an 'initial investment project', intended for production facilities located in the Single Economic Zone.

✓ Circular 15/2024 - Implementation of the reform on international taxation (Legislative Decree No. 209 of 27 December 2023): modification of the tax residence criteria of companies and entities

The Circular analyses the new regulations on international taxation. As part of the implementation of the tax reform enabling act (Law No. 111 of 9 August 2023), Article 2 of Legislative Decree No. 209 of 27 December 2023 reformulated the notion of residence of companies and other legal entities.
In particular, the criterion of the "place of administration" has been replaced by the criteria of the "place of effective management" and of the "main business purpose place of running" and the criterion of the "main business purpose" has been eliminated.

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