FIVERS

Fiscal Update

September 2024

Summary

REGULATORY UPDATE

✓ Implementation of Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of information on income tax by certain companies and branches (Legislative Decree No. 128 of 4 September 2024)

Legislative Decree No. 128 of 4 September 2024, which entered into force on 27 September 2024, is aimed at implementing Directive 2021/2101/EU, which amends Directive No. 2013/34/EU with regard to the disclosure of income tax information by certain companies and branches and whose main objective is to improve tax transparency.
In particular, the decree provides that the following categories of companies are required to prepare and publish an income tax return pursuant to Articles *5-quinquies* and *5-sexies* of Legislative Decree No. 139/2015:

- parent company, in the event that the consolidated revenues at the consolidated balance sheet date exceed, for each of the last two consecutive fiscal years, the amount of EUR 750,000,000;
- autonomous company, in the event that the revenues, at the balance sheet date, exceed, for each of the last two consecutive fiscal years, the amount of EUR 750,000,000;
- subsidiaries of a parent company of a non-member country, if the revenues on a consolidated basis on the closing date of the consolidated accounts exceed, for each of the last two consecutive fiscal years, the amount of EUR 750,000,000;
- branches, if the company that opened them is: (i) part of a group, the consolidated revenues of which exceed EUR 750,000,000; (ii) an autonomous company, the revenues of which exceed EUR 750,000,000.

As to the content of the communication, it must include:

- the name of the company, the fiscal year of reference, the currency used;
- in the case of a parent company, the list of companies included in the scope of consolidation;
- a brief description of the nature of the activities carried out;
- the number of employees;
- the total amount of revenues, including transactions with related parties;
- the amount of profit or loss before income tax;
- for each tax jurisdiction the amount of income tax accrued and paid;
- the amount of undistributed profits at the end of the relevant financial year.

The notice must be made available to the public free of charge and in electronic format.

✓ Supplementary and corrective provisions to the Business Crisis and Insolvency Code pursuant to Legislative Decree No. 14 of 12 January 2019 (Legislative Decree No. 136 of 13 September 2024)

On 28 September 2024, Legislative Decree No. 136 of 13 September 2024 (the so-called "*correttivo-ter*" decree) came into force, which introduces a series of amendments and additions to the Business Crisis and Insolvency Code in order to overcome coordination errors and make the regulatory framework for corporate crisis management more effective.
Among others, we highlight the following changes and/or additions:

- with regard to the figure of the independent professional, it has been provided that at the time of the assignment giving, he or she must not have any personal or professional relationships with the company or other parties involved in the reorganisation operation;
- the attester to the reorganisation plan is a figure that, with the amendments introduced by this decree, may also be involved in the negotiated crisis resolution procedure;

- access to the negotiated crisis resolution procedure may take place, indifferently, when the company is in a state of crisis, insolvency or in a situation of 'patrimonial or economic-financial' imbalance;
- in order to encourage the use of this procedure, an accrual plan of 120 instalments has been provided by the Italian Tax Authorities in the event that the company is in a serious situation of difficulty on the basis of the request filed and signed by the independent expert;
- with regard to debt restructuring agreements, provision has been made for a change in the content of the professional's report in the event that the agreement is of a liquidation nature or if it is aimed at business continuity;
- in the context of the composition with creditors, a reduction of the percentage to 5% (previously it was 10%) of the creditors' threshold required for the submission of a proposal competing with the one submitted by the debtor was proposed.

✓ Information to be transmitted to "ENEA" and to the National Portal of Seismic Classifications "PNCS" for the 110% tax deduction of expenses for energy efficiency and anti-seismic interventions (Prime Ministerial Decree of 17 September 2024)

The Prime Ministerial Decree of 17 September 2024 defines the content, methods and deadlines for the transmission to "ENEA" and to the National Portal of Seismic Classifications ("PNCS"), of information on interventions aimed at energy requalification and seismic risk reduction for the purposes of benefiting from the superbonus.
The information includes the cadastral data of the real estate subject to the interventions, the amount of the expenses incurred, and the percentages of the deductions due.
The above information should be submitted by the following subjects:

- The ones that by 31 December 2023 have submitted the notice of commencement of works, i.e. the request for the acquisition of the permit required for the demolition and reconstruction of buildings, and that by the same date have not completed the works;
- who have submitted the notice of commencement of works, i.e. the application for the acquisition of the required planning permission for the demolition and reconstruction of buildings, as of 1 January 2024.

Qualified technical professionals, such as designers, works managers, static testers, are required to transmit these communications to "ENEA", for energy efficiency interventions, and to the "PNCS", for anti-seismic interventions.

✓ Implementation of Directive 2022/2464/EU of the European Parliament and of the Council of 14 December 2022 amending Regulation 537/2014/EU, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU for corporate sustainability reporting (Legislative Decree No. 125 of 6 September 2024)

On 25 September 2024, Legislative Decree No. 125 of 6 September 2024 came into force, which transposes the so-called "Corporate Sustainability Reporting Directive" ("CSRD"), with the aim of strengthening the non-financial reporting obligations, already incumbent on large companies, especially for small and medium-sized companies, and the replacement of non-financial reporting with individual, or consolidated, sustainability reporting.
This reporting consists of providing information useful for understanding the impact of sustainability issues on the company and how they affect the company's performance, with regard to the description of the objectives, the strategy adopted and the main risks involved.

This legislation also introduced the figure of the specially appointed auditor of sustainability reporting, who is responsible for certifying the compliance of sustainability reporting on the basis of verification of compliance with the required standards.
The managers of the obligated entity have the obligation and responsibility to ensure that the sustainability report is prepared in accordance with this decree.

✓ Revision of the tax penalty system - Legislative Decree No. 87 of 14 June 2024 - Violations committed from 1 September 2024 (Legislative Decree No. 87 of 14 June 2024)

With Legislative Decree No. 87 of 14 June 2024, published in the Official Journal No. 150 of 28 June 2024, it has been implemented the revision of the tax penalty system. The amendments relating to criminal penalties apply from 29 June 2024, while those relating to the revision of administrative penalties apply from violations committed from 1 September 2024.
Among the changes made to the tax penalty system in the administrative sphere:

- reduction of the penalty from 30% to 25% in the case of omitted, insufficient or late payments;
- reduction of the penalty from 90% to 70% in the case of omitted or incorrect invoicing and unfaithful tax return;
- reduction of penalties from 120 - 240% to 120% in the case of omitted tax return;
- introduction of unfaithfulness in respect of the amended tax return with 50% penalty;
- reduction to 12.50% of the penalty for payments made no more than 90 days late, further reduced by one fifteenth for each day of delay if payment is made in the first fifteen days;
- modification of the institution of legal cumulation of the penalties by providing for the application of material concurrence not only to formal violations of the same provision;
- introduction of the possibility to apply, also in the case of tax amend, the legal cumulation of the penalties and continuation, limited, however, to the individual tax and the individual tax period;
- introduction of the reduction of the penalty to 1/7 of the minimum regardless of whether a breach is amended after the year or after the deadline for submitting the tax return of the year in which the error was committed;
- reduction of penalties in the case of indirect exports (i.e. in case of goods are not transported out of the EU by the foreign transferee within 90 days) from 50-100% to 50%;
- introduction of the same penalty as in the previous point (50% of the tax) for violations relating to intra-Community supplies, if the goods are transported to another EU Member State by the transferee or by a third party on his behalf and the goods are not received in that State within ninety days of delivery in Italy.

MINISTERIAL PRACTICE

REPLIES TO REQUESTS FOR ADVANCE TAX RULINGS

✓ VAT - Tax consolidation - assignment and offsetting of quarterly VAT credit (Reply to the request for advance tax ruling No. 180 of 12 September 2024)

The Italian Tax Authorities, in the reply to the request for advance tax ruling No. 180 of 12 September 2024, intervened on the assignment and offsetting of quarterly VAT credits to the tax consolidation, denying a company participating in a tax consolidation pursuant to Article 117 of Presidential Decree No. 917/1986 ("TUIR") the possibility of transferring to the consolidating company all the VAT credits shown in the TR form, being transferable only those requested for reimbursement and remaining excluded those requested for offsetting, as provided by the combined provisions of Article 7 of the Ministerial Decree of 1st March 2018 and Article 17 of Legislative Decree No. 241 of 9 July 1997.

The amendment of Article 5, paragraph 4-*ter* of Decree-Law No. 70 of 14 March 1988 extended the possibility of assigning the VAT credit arising from quarterly settlements to third parties, but only for those purposes.

✓ Declaration of owned crypto assets and stamp duty (Reply to the request for advance tax ruling No. 181 of 12 September 2024)

The Italian Tax Authorities, in the reply to the request for advance tax ruling No. 181 of 12 September 2024, provided clarifications on the declaration of owned crypto assets and stamp duty. In particular, in agreement with the solution put forward by the applicant, the Italian Tax Authorities confirmed that, in the absence of an intermediary applying the stamp duty, a tax is due on the value of the crypto assets held by all individuals tax resident in the territory of the State and confirmed that such assets, wherever held, must be indicated in the RW form of the tax return as already specified in Circular No. 30/E of 27 October 2023.

✓ VAT treatment of gratuitous transfers made to the Public Administration for humanitarian purposes (Reply to the request for advance tax ruling No. 182 of 12 September 2024)

The Italian Tax Authorities, in the reply to the request for advance tax ruling No. 182 of 12 September 2024, provided clarifications on the applicability of the VAT non-taxable regime pursuant to Article 8, first paragraph, letter b-*bis*) of Presidential Decree No. 633 of 26 October 1972, concerning transfers for humanitarian purposes to Public Administrations and development cooperation entities, with transport by the latter within 180 days from delivery.
In particular, based on national and EU case law, the Italian Tax Authorities concluded by confirming that, pending the issuance of the envisaged implementing decree, proof of exportation 'may also be provided by means of a certificate issued by the competent official of the same Administrations'.

✓ Application of registration tax to a lease containing provisions relating to a penalty clause (Reply to the request for advance tax ruling No. 185 of 18 September 2024)

The Italian Tax Authorities, with the reply to the request for advance tax ruling No. 185 of 18 September 2024, clarified that when registering a lease agreement containing a penalty clause, the registration tax must be levied on the provision giving rise to the most onerous taxation, as provided for by Article 21 paragraph 2 of Presidential Decree No. 131/86 for deeds containing several provisions linked by a necessary derivation bond.
In fact, the penalty clause has an ancillary function with respect to the lease to which it accedes, whose cause it shares and with respect to which it takes on the function of reinforcing and deterring non-performance. Therefore, not having an autonomous cause, cannot be subjected to autonomous taxation.
It is further clarified that, for the purpose of applying Article 21 paragraph 2 of Presidential Decree No. 131 of 26 April 1986, where it requires a comparison of the contractual provisions in order to identify the one that "gives rise to the most onerous provision", it must be considered that the penalty clause is to be taxed as a conditional provision, i.e., pursuant to Article 27 of Presidential Decree No. 131 of 26 April 1986, applying the fixed tax of €200 at registration and paying the higher tax only after the event giving rise to the higher tax (i.e., in the case of the penalty clause, the non-performance) has been reported pursuant to Art. 19 of Presidential Decree No. 131 of 26 April 1986.

- ✓ **Increases in the so-called TARI-fee - VAT treatment (Reply to the request for advance tax ruling No. 183 of 12 September 2024)**

The Italian Tax Authorities, in the reply to the request for advance tax ruling No. 183 of 12 September 2024, clarified that the surcharges of the so-called TARI-fee, i.e. the components "UR1a" and "UR2a", introduced as of 1 January 2024 by the Italian Regulatory Authority for Energy, Networks and Environment ("ARERA"), contribute to determining the overall cost of the service provided to the customer/consumer and contribute to determining the unitary VAT base of the TARI-fee.

- ✓ **IRAP - redetermination of the taxable base following a judgment - refund (Reply to the request for advance tax ruling N.186 of 26 September 2024)**

The Italian Tax Authorities, with the reply to the request for advance tax ruling No. 186 of 26 September 2024, clarified that in case the taxpayer has paid higher taxes that turned out, not to be due as a result of a judgment, he is entitled to the refund pursuant to Article 21 of Legislative Decree No. 546 of 31 December 1992.
In fact, it has been clarified that it should not be considered as an undue payment at the outset, but because of a subsequent event, which is the prerequisite for the restitution of taxes. The two-year time limit for the claim runs from when the judgement is final.
In the present case, the undue payment arose from the fact that a public body had calculated IRAP using the so-called retributive method, also taking into account wages that turned out not to be due.

LEGAL ADVICE

- ✓ **Publishing - typographical and digital book composition services - 4 % VAT rate (Reply to Request for Legal Advice No 5 of 2/09/2024)**

The Italian Tax Authorities, in its Answer to Legal Advice Request No. 5 of 2 September 2024, clarified that the reduced VAT rate of 4% should be applied to the services of typographical and digital book services.
The Italian Tax Authorities consider the legislator's desire to facilitate the production and sale of books on any kind of physical and digital medium, and therefore considers an evolutionary interpretation of the rules to be reasonable.
Moreover, the adoption of this interpretation is not precluded by the Supreme Court (Judgment No. 31022/2015 and No. 30722/2011).
In the opinion of the Italian Tax Authorities, a different interpretation of the facilitation rules 'would empty them of meaning since modern book production techniques are no longer perfectly traceable to the individual services that the rules themselves were intended to facilitate'.

RESOLUTIONS

- ✓ **VAT - Issue of variation note - Ordinary liquidation of a company and its extinction by cancellation from the Register of Trading Companies (Italian Tax Authorities Resolution No. 47 of 19 September 2024)**

With Resolution No. 47/E of 19 September 2024, the Italian Tax Authorities clarified that, once the company is extinguished without the right to issue the decreasing variation note having been exercised, the shareholders are not allowed to take its place in issuing it to recover the VAT related to an uncollected credit.
The Italian Tax Authorities have clarified that the ordinary liquidation of a company, followed by its extinction by cancellation from the Register of Trading Companies, cannot be applied by analogy to the

succession effects in the tax obligations provided for in the case of a merger pursuant to Article 172 of the TUIR, which, as clarified by the jurisprudence of legitimacy (Decision No. 21970 of 30 July 2021), produces the effects of succession, as it does not represent an operation that concludes the corporate relations.
The principles of succession described are not, however, applicable to the ordinary liquidation of a company, since this is a procedure aimed at the termination of all corporate relations and entails the extinction of the company by means of cancellation from the Register of Trading Companies, as there is no continuation of the business nor the succession of other parties to the subjective positions of the company being liquidated.

✓ Payment, by means of F24 form, of the amounts due in relation to the Biennial Preventive Arrangements (Resolution No. 48 of 19 September 2024)

With Resolution No. 48/E of 19 September 2024, the Italian Tax Authorities have established the tax codes to allow the payment, by means of the F24 form, of the amounts due by the deadline for payment of the balance of income taxes 2024, in relation to the Biennial Preventive Arrangements under Title II of Legislative Decree No. 13 of 12 February 2024, as amended by Legislative Decree No. 108 of 5 August 2024.

ORDERS

✓ Supplementary communication certifying that investments in the "*Zes Unica*" were realised by the deadline of 15 November 2024 (Order No. 350036 of 9 September 2024)

With the Order No. 350036 of 9 September 2024, the Italian Tax Authorities approved the model of the new supplementary communication introduced by Article 1 of Legislative Decree No. 113 of 9 August 2024, to be submitted, under penalty of forfeiture, for the tax credit "*ZES Unica del Mezzogiorno*" pursuant to Article 16 of Legislative Decree No. 124 of 19 September 2023.
The persons who have submitted the "ordinary" communication for access to the benefit *pursuant to* Article 5, paragraph 1 of the Decree of 17 May 2024, must submit to the Italian Tax Authorities a supplementary communication certifying that the investments indicated in the communication submitted have been realized by the deadline of 15 November 2024.
This supplementary communication must be submitted from 18 November 2024 to 2 December 2024 and exclusively electronically, using the '*ZES UNICA INTEGRATIVA*' software, available on the Italian Tax Authorities website.

✓ Application for recognition of the non-repayable subsidy on building works 2024 deductible at 70% (Order No. 360503/2024 of 18 September 2024)

With the Order No. 360503 of 18 September 2024, the Italian Tax Authorities defined the information content of the procedures and deadlines for submitting the application for the recognition of the non-repayable contribution on building works 2024 deductible at 70%:

- the application must be prepared and sent electronically exclusively by means of the web procedure made available in the private area of the Italian Tax Authorities website;
- the application may be transmitted directly by the applicant or through an intermediary referred to in Article 3 paragraph 3 of Presidential Decree No. 322 of 22 July 1998, as amended, with a proxy to consult the applicant's Tax File;
- the deadline for transmission is 31 October 2024, unless extended.

✓ Approval of the digital signature procedure of the Italian Tax Authorities's Formal Reports of Findings (Order No. 372380 of 30 September 2024)

With the Order No. 372380 of 30 September 2024, the Italian Tax Authorities, regarding the implementation of Article 38-*bis*, paragraph 2, of Presidential Decree No. 600 of 29 September 1973, approved the operating procedures for the digital signature of the minutes of findings drawn up by its staff during and at the end of administrative tax audit activities ("PVC").
It is clarified that records of findings may be signed by handwritten signature or by digital signature, if the party is in possession of it. Even in the case of a digital signature, the signature may come from a delegate of the taxpayer. After the signature of the party or the delegate, the PVC is digitally signed by the Revenue Agency, which in turn sends it to the PEC address of the taxpayer or of the delegate. If the signature is autographed, the PVC is physically delivered to the taxpayer. It has been clarified that if the delivery is refused, the PVC is sent by registered mail with return receipt or by PEC.

CIRCULARS

✓ Articles 6 to 37 of Legislative Decree No. 13 of 12 February 2024 - Rules on two-year composition agreement (Circular No. 18/E of 17 September 2024)

With Circular No. 18/E of 17 September 2024, the Italian Tax Authorities have provided important operating instructions on the two-year composition agreement. In particular, the general guidelines have been outlined and the specific rules for forfeit taxpayers and ISA subjects have been explained. Starting from the scope of those involved, passing through the benefits, conditions, methods and timeframe for adhering, to the causes of termination and forfeiture, the circular sets out the scope of application of the two-year composition agreement. Finally, the last chapter provides answers to some questions.

CASE LAW UPDATE

✓ VAT deduction (Supreme Court, Decision No. 24022 of 6 September 2024)

The Supreme Court, with Decision No. 24022 of 6 September 2024, ruled that the option for the separate application of VAT, pursuant to Article 36, paragraph 3, of Presidential Decree No. 633 of 26 October 1972 is allowed when the different economic activities, taxable and exempt, exercised in a systematic and non-occasional manner, are substantially different and effectively separable, being not decisive on the point the mere attribution of a different *ATECO* code, but on the basis of objective criteria, so as to be susceptible of forming the subject of autonomous business activities, each having its own organizational structure.

✓ Invoicing non-existent transactions, formal obligations (Supreme Court, Order No. 24133 of 9 September 2024)

The Supreme Court, with the Order No. 24133/2024 of September 9, 2024, confirmed the consolidated jurisprudential orientation (*ex multis* Cass. No. 14275/2020 of July 8, 2020) according to which, for VAT purposes, the obligation, provided for in Article 6, paragraph 8, Legislative Decree No. 471 of 1997 on the transferee of goods or the purchaser of a service, to regularize the taxable transaction entered into by the supplier, entails, in the event of failure to issue an invoice, as well as in the case of the issue of an irregular invoice, the need for the transferee/purchaser to verify the formal regularity of the transaction, while it is excluded that it is required to carry out in-depth investigations on the merits in order to identify the correct applicable rules, since this would result in the exercise, by a private party, of investigative and evaluative functions typically pertaining to the Italian Tax Authorities when correcting the declaration of the supplier, as the sole and effective tax debtor.

✓ Chargeability of tax and chargeable event of a transaction for VAT purposes (Supreme Court, Order No. 24673 of 13 September 2024)

In the Order No. 24673 of 13 September 2024, the Supreme Court provided the principle according to which the assignment of a receivable related to supply of services for which the deferred VAT chargeability regime operates, pursuant to Article 6, paragraph 5, of Presidential Decree No. 633 of 26 October 1972, within the scope of a factoring contract, with the consequent realization of the consideration by the assignor, determines the termination of the deferred VAT chargeability regime. The taxable person is therefore required to pay the VAT without having to wait for the payment of the assigned debtor in favor of the factor.
The reason for this regime is to protect the taxpayer from delays in the execution of payments by the public administration, by avoiding that the taxpayer is required to pay VAT on a transaction carried out but for which the consideration has not been paid. However, after the credit has been assigned, there is no longer any reason to apply the deferred VAT chargeability.

✓ Administrative procedure, Statute of taxpayers' rights, Access inspections and audits (Supreme Court, Order No. 24995 of 17 September 2024)

The Supreme Court with Order No. 24995 of 17 September 2024, on the subject of access, inspections and audits (both with reference to the assessment of VAT pursuant to Article 52 of Presidential Decree No. 633 of 26 October 1972 and of direct taxes, pursuant to Article 33 of Presidential Decree No. 600 of 29 September 1973) established that the appellant's need to know the reasons for the Prosecutor's decree authorising home access, in the presence of serious indications of violation of tax laws, must be balanced against the interests protected by the investigative secrecy opposed pursuant to Article 329 of the Code of Criminal Procedure and, as a result, the refusal does not in itself entail the nullity of the assessment notice.
In conclusion, the taxpayer may only object that the elements acquired during a home inspection cannot be used if it demonstrates that its right of defense has been infringed.

✓ Invoices for non-existent transactions - VAT – Tax Return (Supreme Court, Judgment No. 34407 of 12 September 2024)

Supreme Criminal Court Judgement No. 34407 of 12 September 2024 returns to the subject of the relationship between fraudulent Return using invoices for non-existent transactions (Article 2 of Legislative Decree No. 74 of 10 March 2000) and the fictitious supply of labor.
It constitutes the offence of fraudulent return by use of invoices or other documents for non-existent transactions (Article 2 of Legislative Decree 74/2000) for VAT purposes to use fictitious taxable items consisting of invoices issued by a company that, by using simulated service contracts, in reality carried out illegal labor intermediation activities, given the difference between the person who carried out the service, i.e. the individual workers, and the person indicated on the invoice.
The same offence is committed where invoices formally referring to a contract for the provision of services are used in the corporate income tax return, which in fact constitutes a screen to conceal an irregular supply of labor, since these invoices relate to an apparent legal transaction, different from the one entered into between the parties, concerning a transaction involving significant tax consequences.
What is relevant in this respect is not the fictitiousness of the companies issuing the invoices, but the actual nature of the services provided by these companies and indicated in the invoices.
In particular, the dispute at issue concerns the fact that a company was awarded service contracts and then transformed the cost of the labor necessary to perform those contracts into a cost for services provided by another company, by entering into subcontracting agreements with other companies

controlled and effectively managed by the same director and on the assumption that the latter had formally hired the workers used.

✓ Tax credit for income earned abroad (Supreme Court, Decision No. 24160 of 9 September 2024)

The Supreme Court, with Decision No. 24160 of 9 September 2024, ruled that Article 169 of the TUIR, in attributing general prevalence to international agreements against double taxation, is without prejudice to the application of the rules of the TUIR itself only if they are concretely more favorable to the taxpayer. Therefore, the taxpayer cannot be denied the tax deduction against double taxation due to the omission to file the tax return or the omission to indicate the income produced abroad in the return filed.

✓ Tax assessment (Supreme Court, Order No. 23600 of 3 September 2024)

The Supreme Court, in its Order No. 23600 of 3 September 2024, set forth the following principle of law: on the subject of tax assessment, in the event of the issue of subjectively non-existent invoices pursuant to Article 8 of Legislative Decree No. 74 of 10 March 2000 by the "paper mill" of origin, the doubling of the assessment term provided for by Article 43, paragraph 3, of Presidential Decree No 600 of 1973, in force *ratione temporis*, also applies to the person who used such invoices, deriving an economic advantage from them through the mechanism of VAT deduction, having put in place facts entailing the obligation to make a criminal report, at least with reference to the untrue declaration pursuant to Article 4 of the same legislative decree.

EUROPEAN UNION

✓ Principle of loyal cooperation (EU Court of Justice, No C-73/23 of 12 September 2024)

In its judgment in Case C-73/23, the Court of Justice of the European Union clarified that the principle of fair cooperation, established in Article 4(3) of the Treaty on European Union, and the principle of the primacy of European Union law require the national court to disapply national provisions held to be incompatible with Article 135(1)(i) of Directive 2006/112, read in conjunction with the principle of fiscal neutrality, without the relevance, in that regard, of a judgment of the national constitutional court which has ordered the maintenance of the effects of those national provisions being relevant.
Furthermore, it was specified in that judgment that the rules of European Union law on recovery of undue payment must be interpreted as conferring on the taxable person a right to obtain repayment of the amount of VAT levied in a Member State in breach of Article 135(1)(i) of Directive 2006/112. However, exceptionally, such a refund may be refused when it would lead to unjust enrichment of the persons entitled. The protection of the rights guaranteed in that regard by the legal order of the European Union does not require repayment of duties, taxes and charges levied in breach of European Union law when it is established that the entity liable to pay them has in fact passed them on to other persons.

✓ State Aid, Exempt Transactions (EU Court of Justice, No C-741/22 of 12 September 2024)

In its judgment in Case C-741/22, the Court of Justice of the European Union clarified that the rules of the European Union law on recovery of undue payment must be interpreted as conferring on a taxable person a right to obtain reimbursement of the amount of VAT levied in a Member State in breach of Article 135(1)(i) of Directive 2006/112, provided that such reimbursement does not result in unjust enrichment of that taxable person.

Furthermore, Article 135(1)(i) of Council Directive 2006/112/EC of 28 November 2006, read in conjunction with the principle of fiscal neutrality, must be interpreted as meaning that Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU') provides that, when the VAT exemption from which certain entities have benefited constitutes unlawful State Aid, a taxable person who has not benefited from such an exemption may not receive, in the form of damages, an amount equivalent to the VAT paid by itself.

MINISTRY OF ENTERPRISE AND MADE IN ITALY

✓ Transition 5.0. - Filing of communications of finalization of innovation projects (Directorial Decree of 11 September 2024)

With the Directorial Decree of 11 September 2024, published on the website of the Ministry of Enterprise and Made in Italy ("MIMIT"), the deadlines and procedures for the filing of communications for the finalization of innovation projects under Art. 12, paragraph 6, of the Ministerial Decree of 24 July 2024 were defined.
Communications may be filed:

- from 12 September 2024;
- exclusively via electronic system for the management of the measure available in the 'Transition 5.0' section of the GSE website, accessible via SPID;
- by means the forms and instructions made available.

Communication of finalization needs to be filed by 28 February 2026 deadline.
Within 10 days from the filing of the communication, the GSE, having checked the correct uploading of the data, the completeness of the documents, the information provided and the compliance with the maximum limit of eligible costs, notifies the company the amount of the tax credit that can be used for offsetting, which cannot in any case exceed the amount of the booked tax credit. After 10 days from such notification by the GSE, the tax credit will then be available for offsetting through the F24 form.

MINISTRY OF ECONOMY AND FINANCE

✓ IMU rates: new cases (Ministerial Decree of 6 September 2024)

The Decree of 6 September 2024 of the Deputy Minister of Economy and Finance was published in the Official Journal No. 219 of 18 September 2024. The Decree supplements the Decree of 7 July 2023 of the Deputy Minister of Economy and Finance, concerning the identification of the relevant cases for the purposes of IMU, on the basis of which the municipalities may differentiate the rates referred to in paragraphs 748 to 755 of Art. 1 of Law No. 160 and re-establishing Annex A in which, compared to the previous version, the conditions under which municipalities may introduce further diversification within each of the cases already provided for in the Decree of 7 July 2023 are amended and supplemented.
In the second half of October 2024, the IT application through which municipalities will be able to process and file the IMU rate schedule for FY2025 will be made available within the "*Portale del federalismo fiscale*".

✓ Identification of credit transactions by homogeneous categories for the purpose of collecting average global effective rates applied by banks and financial intermediaries (Ministerial Decree of 24 September 2024)

The Decree of 24 September 2024 was published in the Official Journal No. 229 of 30 September 2024, which identifies, in Art. 1, a series of homogeneous categories of credit transactions for the purpose of the collection the average effective global rates applied by banks and financial intermediaries.

OECD/G20

✓ OECD/G20 Inclusive Framework on BEPS - Pillar 1 - Amount B: Model Competent Authority Agreement (MCAA)

As explained by OECD release of 26 September 2024, in February 2024 the OECD Inclusive Framework released a report on Amount B of Pillar 1 that provides a simplified pricing framework for basic marketing and distribution activities that should reduce transfer pricing disputes, compliance costs and increase tax certainty for both tax administrations and taxpayers.
In June 2024, the OECD released additional guidance on Amount B, including the definition of covered jurisdiction for the Inclusive Framework political commitment on Amount B—allowing jurisdictions to begin with implementation. The MCAA on application of Amount B is intended to assist countries in resolving potential double taxation in connection with the application of Amount B when there is a bilateral tax treaty in effect.
The model includes optional provisions in blue, in order to allow the local competent authorities to individualize the agreement to the particular circumstances of the applicable tax treaty (e.g., the optional reference to the OECD Transfer Pricing Guidelines). In addition, the text of the MCAA should only be considered as a suggestion; therefore, jurisdictions are free to partially amend the text in their bilateral negotiations.

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