FIVERS

Fiscal Update

October 2024

Summary

UPDATE ON REGULATION

✓ **Legislative Decree No. 139 of 18 September 2024 on the provisions for the rationalization of indirect taxes other than VAT (Legislative Decree No. 139 of 18 September 2024)**

Legislative Decree No. 139 of 18 September 2024, containing provisions for the rationalization of indirect taxes other than VAT, was published in the Official Gazette No. 231 on 2 October 2024. The Decree was issued by the Government pursuant to the delegation provided under Article 10 of Law No. 111 of 9 August 2023.

The changes, effective from 3 October 2024, will apply starting 1 January 2025.

Article 1 introduces revisions to gift and inheritance taxes, amending the entire Legislative Decree No. 346 of 31 October 1990 (the "**TUS**"). The most important changes are summarized below:

(i) redefinition of methods for determining the tax, rates, and exemptions;
(ii) extension of the tax's scope to include gratuitous transfers of assets and rights, in addition to transfers due to death or donations, to include transfers that occur free of charge (replacing the term "*other liberality between living persons*"), covering transfers resulting from trusts and other destination restrictions;
(iii) introduction of higher rates without exemptions in cases where the category of beneficiaries cannot be determined at the time of asset transfer or succession initiation. In such cases, the appropriate class of relatives or dependents subject to uniform taxation must be identified;
(iv) concerning the taxable base, there is an exclusion of the "*donatum*" from the "*relictum*" for the purposes of tax rates and exemptions: the tax will not apply, in addition to amounts not normally subject to collation under Article 742 of the Civil Code, and gifts of small value (Article 783 of the Civil Code), to donations that do not qualify as gifts under Article 770, paragraph 2 of the Civil Code or to customary gifts for services rendered or those in accordance with general practice;
(v) amendments to provisions on the transfer of family businesses;
(vi) a provision allowing banks, financial intermediaries, and companies and entities issuing shares, bonds, certificates, and other securities to release estate assets before the inheritance declaration is filed, in the presence of real estate in the estate, and within the limits of the amounts due for cadastral, mortgage, and stamp duties, when the sole heir under 26 years old requests it;
(vii) general simplification of declarations, including with regard to attached documents and electronic submission;
(viii) introduction of a self-assessment principle for taxes, subject to subsequent checks by Tax Authorities. The Tax Authorities can rectify and assess the higher tax if it deems the inheritance declaration, or supplementary declaration, to be incomplete or inaccurate. The previously fixed interest rate of 4.5% per six-month period is also eliminated.

Article 2 introduces amendments to the registration tax rules under Presidential Decree No. 131 of 26 April 1986, aimed at:

(i) updating references to domestic and EU law;
(ii) simplifying the registration of deeds, including through telematic methods;
(iii) facilitating the tax payment, including via self-assessment by taxpayers;
(iv) providing special agreements for the transfer of businesses or business units, allocating the consideration in the deed or annexes;
(v) providing that for annuities subject to the registration tax (and also inheritance and gift tax), where the legal interest rate is equal to or less than 0,1%, the coefficients established in Ministerial Decree No. 302 of 30 December 2015, will also apply.

Article 5 modifies the current rules regarding mortgage and cadastral taxes by merging the two categories. For operations conducted in the interest of the state or other public administrations, ordinary fees for mortgage and cadastral services will not be due, and higher rates will apply for registrations.

✓ **Conversion into Law of Decree Law No. 113 of 9 August 2014 on urgent fiscal measures, extensions of regulatory terms and economic interventions (Law No. 143 of 7 October 2024)**

Law No. 143 of 7 October 2024, converted Decree Law No. 113 of 9 August 2014 (the "**Omnibus Decree**"), which introduced the following tax-related provisions:

(i) non-taxable allowance (the so-called "*Christmas Bonus*") amounting to Euro 100 provided to employees who meet specific income and family criteria;
(ii) special tax amnesty for FYs from 2018 to 2022 for taxpayers under the Individual Taxpayer Evaluation system (ISA) who enter the biennial creditors' composition ("**CPB**") by 31 October 2024. Specifically, Article 2-*quater* of the Omnibus Decree mandates the payment of a substitute tax on income and related surcharges for years still open to assessment. The payment of this substitute tax will prevent adjustments to business or self-employment income under Article 39 of Presidential Decree No. 600 of 29 September 1973, and Article 54, paragraph 2, second sentence, of Presidential Decree No. 633 of 26 October 1972 (the "**VAT Decree**"). The taxable base for the substitute tax will be determined by the difference between the income declared each year and its increase by a percentage (from 5% to 50%) based on the taxpayer's ISA score;
(iii) a revised penalty treatment for entities that do not join the CPB or who are excluded from it. Article 2-*ter* of the Omnibus Decree states that the thresholds for ancillary penalties in Article 21 of Legislative Decree No. 472 of 18 December 1997, are reduced by half in cases of administrative penalties for violations relating to the tax periods and taxes covered by the CPB, for those who (a) did not join the CPB, and (b) joined but later forfeited their participation;
(iv) the extension of the deadline for opting to redetermine the tax cost of land (agricultural and building) and equity investments held by non-entrepreneurs as of 1 January 2024. The new deadline is 30 November 2024. The redetermination of the tax cost for 2024 will be done through the application of a 16% substitute tax rate;
(v) new procedures for accessing the tax credit under Article 16 of Decree-Law No. 124 of 19 September 2023 (the "*Single ZES South*");
(vi) the increase of the substitute tax from Euro 100.000 to Euro 200.000 for individuals benefiting from the tax-advantaged regime for "*newly resident persons*" under Article 24-bis, paragraph 2 of Presidential Decree No. 917 of 22 December 1986 (the "**TUIR**");
(vii) measures to boost resources for amateur sports associations by reintroducing a tax credit for advertising campaigns exceeding Euro 10;
(viii) a substitute tax on IRPEF (personal income tax) and regional and municipal surcharges, equal to 25% of the taxes levied in Switzerland, for cross-border workers residing in municipalities listed in Annex 1 of the Omnibus Decree.

✓ **Urgent measures on economic and fiscal matters in favor of territorial entities (Decree Law No. 155 of 19 October 2024)**

Decree-Law No. 155 of 19 October 2024 (the so-called "**Advances Decree**") titled "*Urgent measures on economic and fiscal matters in favor of territorial entities*" was published in the Official Gazette at No. 246 on 19 October 2024. The tax provisions are contained in Articles 7 and 8.

The Advances Decree introduced, among other things, tax provisions in Article 7 to regulate access to the special tax amnesty scheme for taxpayers who join the CPB.

The relevant provision stipulates that individuals who have applied the synthetic indices of tax reliability (ISA), with revenues up to Euro 5.164.569 and who do not determine income using flat-rate criteria, may access the tax amnesty scheme if, for at least one of the years between 2018 and 2022:

(i) they declared one of the reasons for exclusion from ISA application due to the impact of the Covid-19 pandemic;
(ii) they declared the existence of non-normal operating conditions as defined in Article 9-*bis*, paragraph 6(a) of Decree-Law No. 50 of 24 April 2017.

For the years where these circumstances apply, the calculation of the substitute tax for remediation purposes will follow these guidelines:

(i) the taxable base for the substitute tax on income and related surcharges is the difference between the business or self-employment income already declared for the relevant year and the increased value (by 25%);
(ii) the substitute tax on income and related surcharges is calculated by applying a rate of 12.5% to this increased value;
(iii) the taxable base for the substitute IRAP (Regional Tax on Productive Activities) is the difference between the net production value already declared for the relevant year and its increase by 25%;
(iv) the IRAP substitute tax is calculated by applying a rate of 3.9% to the increased value.

The resulting substitute tax (for each of the periods from 2018 to 2022) is further reduced by 30%.

Additionally, Article 8 of the Advances Decree amends the provisions regarding the tax credit for investments in the Single SEZ (Special Economic Zone) in the Mezzogiorno. Contrary to the initial provisions, it is now allowed that investments made between 1 January 2024 and 15 November 2024 that exceed the previously reported amounts or are additional. These investments can be reflected in a supplementary communication, which will account for the increased tax credit accrued.

MINISTERIAL PRACTICE

REPLIES TO REQUESTS FO ADAVNCE TAX RULING

✓ **Lease or purchase of the business unit and Article 119, Paragraph *10-bis* of the Relaunch Decree (Reply to the request for advance tax ruling No. 188 of 1 October 2024)**

In the reply to advance tax ruling No. 188 of 1 October 2024, the Tax Authorities clarified that ONLUS organizations, ODVs, and APSs are excluded from benefiting from the enhanced Superbonus provided by Article 119, paragraphs 8-ter and 10-bis of Decree-Law No. 34 of 19 May 2020 (the "**RSA Superbonus**") if they acquire management of a property subject to subsidized interventions through loan agreements registered after 1 June 2021 (the effective date of the relevant provision).
The Tax Authorities explained that to qualify for the RSA Superbonus, the property subject to the interventions (registered in cadastral categories B/1, B/2, and D/4) must be owned by the institution under one of the following conditions: (a) ownership; or (b) bare ownership; or (c) usufruct; or (d) gratuitous use registered before 1 June 2021.

Additionally, the supplementary requirements for applying Article 119 of Decree-Law No. 34 of 19 May 2020, must be met from the commencement of the work or, if earlier, from the date expenses are incurred, and must remain in effect until the last tax period in which the RSA Superbonus can be claimed.

✓ **Domestic tax consolidation - assignment of VAT credit - affixing of compliance visa pursuant to Art. 35 of Legislative Decree No. 241 of 1997 (Reply to the request for advance tax ruling No. 190 of 1 October 2024)**

In the reply to advance tax ruling No. 190 dated 1 October 2024, the Tax Authorities provided guidance on the transfer of VAT credit to the domestic tax consolidation system and the procedures for affixing the compliance visa for its use in offsetting.

According to the Tax Authorities, when VAT credit is assigned to the consolidating company, the compliance visa must be affixed both to the VAT return of the consolidated company assigning the credit and to the national tax consolidation return (Form CNM) prepared by the consolidating company, which intends to use the transferred credits for compensation. On the other hand, the compliance visa is not required on the annual return for direct taxes of the consolidated companies, as the inclusion of transferred credits in the GN panel serves a summary purpose.

Additionally, the Tax Authorities confirmed that the 10-day deadline from which excess credit can be used for offsetting must be calculated from the submission date of the consolidating company's annual VAT return. After this deadline, the excess credit can be used for offsetting by the consolidating company, even if the CNM form has not yet been submitted.

✓ **Tax credit for investment in new capital goods - Art. 1, paragraphs 1051 to 1063 of Law No. 178 of 2020 - purchase of assets - "*rent to buy*" contract - non-entitlement (Reply to the request for advance tax ruling No. 198 of 10 October 2024)**

The reply to the request for advance tax ruling No. 198 of 10 October 2024 confirmed that the tax credit provided by Art. 1, paragraphs 1055 et seq. of Law No. 178 of 30 December 2020 (the so-called "*Industry 4.0 bonus*") does not apply to investments in 4.0 capital goods acquired through a "*rent-to-buy*" contract.

In this case, the applicant company intends to acquire capital goods with Industry 4.0 characteristics using a contractual arrangement similar to a rent-to-buy agreement.

Specifically, the Tax Authorities clarified that the rent-to-buy contract does not qualify as a valid method of acquiring assets eligible for the tax credit. This is because, at the time of purchase, the assets are already used by the company in a different capacity, and thus, they do not meet the essential requirement of being new, which is a condition for qualifying for credit.

✓ **Contributions of shareholdings - art. 177, paragraphs 2 and *2-bis* of the TUIR - merger by incorporation of transferees - art. 172 of the TUIR - anti-abuse valuation - cases of abuse of law (Reply to the request for advance tax ruling No. 200 of 11 October 2024)**

In the reply to the request for advance tax ruling No. 200 of 11 October 2024, the Tax Authorities addressed potential issues of tax avoidance related to a merger preceded by two separate contribution transactions carried out through the so-called "*controlled realization regime*" under Article 177, paragraphs 2 and 2-*bis* of the TUIR.

The case specifically involved an individual taxpayer who took the following actions:

(i) contributed two controlling stakes to a newly formed company (newco), which was wholly owned by the taxpayer, pursuant to Article 177, paragraph 2-bis of the TUIR;

(ii) contributed this full stake in the newco to another company already controlled by the taxpayer, in accordance with Article 177, paragraph 2 of the TUIR;

The Tax Authorities emphasized that the neutrality regime under Article 177 is intended to be used "*exclusively to obtain a tax advantage contrary to the rationale*" of the regime itself. The Tax Authorities concluded that the sequence of transactions appeared to be primarily structured to facilitate the tax-neutral transfer of shares, which could be seen as an attempt to bypass the normal tax implications associated with such transfers. Furthermore, the transactions lacked substantial economic activity beyond the tax advantages sought.

✓ **Group VAT settlement - merger by incorporation - Article 73, paragraph 3 of Presidential Decree No. 633 of 1972 (Reply to the request of advance tax ruling No. 202 of 15 October 2024)**

In the reply to the request of advance tax ruling No. 202 dated 15 October 2024, the Tax Authorities clarified the management of the VAT group settlement under Article 73, paragraph 3 of the VAT Decree in the case of a merger by incorporation within a corporate group.

The case concerns a company that is part of a VAT group scheme as a subsidiary. Following the merger of two companies, this subsidiary assumes the role of the parent company in a new VAT group procedure.

The Tax Authorities reiterated that, since it is not possible for a company to be part of two separate VAT group settlement procedures simultaneously - one as the parent and the other as the subsidiary from the effective date of the merger - the company must choose, alternatively, to continue with one of the two procedures.

✓ **Patent box - tax consolidation - reverse merger - use of excess credit - declaratory fulfillments - Article 2, paragraph *8-bis* of Presidential Decree No. 322 of 22 July 1998 (Reply to the request of advance tax ruling No. 204 of 15 October 2024)**

In the reply to the request of advance tax ruling No. 204 of 15 October 2024, the Tax Authorities clarified the declaratory requirements for benefiting from the "*Patent Box*" in relation to FY 2018, during which a tax consolidation was in place. The consolidation ended in the following year (FY 2019) due to a reverse merger in which the consolidating company merged into the consolidated company.

In this case, in FY 2023, after the signing of the ruling agreement, the former consolidated company filed a supplementary favorable return. Additionally, as the incorporator of the former consolidating company, it submitted the supplementary CNM form, which indicated an IRES credit.

The Tax Authorities clarified that to utilize the surplus from the Patent Box, the former consolidated company must report the IRES credit, as indicated in the supplementary CNM form, in panel DI of the Income Tax Form SC 2024, referring to FY 2024, year in which the supplementary return was filed.

✓ **IRES - IRAP - cross-border merger - Art. *10-ter* L. No. 77 of 22 March 1983 - *entry tax* (Reply to the request of advance tax ruling No. 206 of 18 October 2024)**

The reply to the request of advance tax ruling No. 206 dated 18 October 2024 concerns a request for clarification regarding the tax implications of a cross-border merger involving the investment sub-funds of the Luxembourg-based SICAV named "*MultiFlex SICAV*" into new Italian funds managed by an SGR.

ALFA, an insurance company, argued that the merger should be treated as a tax-neutral event under Italian tax law, particularly concerning IRES and IRAP obligations. Specifically, the merger involves the incorporation of MultiFlex SICAV's sub-funds into the new Italian funds, maintaining the same investment characteristics and risk profiles. The assets are being transferred at their net asset value (NAV), with no liquidation or transfer of ownership to third parties, ensuring continuity in investments for ALFA. The

company argues that the merger should not trigger any tax liability in Italy, as neither Article 10-*ter* of Law No. 77 of 23 March 1983, nor any other Italian tax provision considers this merger a taxable event.

According to ALFA, the tax values of the assets involved in the merger should remain unchanged, respecting the principle of continuity of tax values typical of tax-neutral transactions. This means that the tax values recognized before the merger should be preserved even after the merger.

The Tax Authorities concluded that, since the SICAV sub-funds are not considered income-generating business entities under Italian law, the entry tax provisions do not apply. Therefore, there is no need to assess the market value of the transferred assets. The proposed cross-border merger is considered a tax-neutral event for the Italian investor, with no immediate tax consequences under the current regulatory framework.

✓ **Determination of taxable capital gain in the case of property transferred within 10 years of the completion of works eligible for Superbonus and acquired only in part by inheritance - Articles 67, paragraph 1(b)-*bis* and 68, paragraph 1 of TUIR (Reply to the request of advance tax ruling No. 208 of 23 October 2024)**

In the reply to the request of advance tax ruling No. 208 of 23 October 2024, the Tax Authorities referencing to the Circular No. 13/E of 13 June 2024, reiterated that for real estate acquired through inheritance, the taxable capital gain is excluded by an explicit regulatory provision. This provision applies to the taxation of capital gains from the sale of real estate that has been subject to concessional interventions under Article 119 of Decree-Law No. 34 of 19 May 2020 (the "**Superbonus**"). The exclusion applies even if the property was only partially acquired by inheritance, as in the case discussed in the tax ruling, where the property was acquired 50% through inheritance.

The Tax Authorities clarified that a taxable capital gain arises from the sale of the property, even if the Superbonus interventions, completed no more than 10 years ago, were carried out solely on the common areas of the building.

In this case, the capital gain from the sale of the property will be subject to taxation only on the 50% share (the portion of the property not inherited). The taxable gain is calculated as the difference between:

(i) the total sale price of the real estate, and
(ii) the purchase cost, adjusted for any additional associated costs. Expenses related to the interventions eligible for the Superbonus will not be included in this calculation if they were completed within 5 years prior to the sale.

✓ ***Carried interest* (Reply to the request of advance tax ruling No. 209, Oct. 23, 2024)**

In the reply to the request of advance tax ruling No. 209 of 23 October 2024, the Tax Authorities confirmed that income received by a manager can be classified as financial income, despite the failure to meet one of the legal presumptive requirements - specifically, the minimum 1% investment commitment required by the carried interest regulations (Article 60 of Decree-Law No. 50 of 24 April 2017).

The Tax Authorities reiterated that, although the presence of leaver clauses might, in principle, suggest the income could be classified as employment income, the following factors are deemed decisive:

(i) the relevant investment amount;
(ii) adequate compensation for the manager's work;

(iii) exposure to an actual risk of loss of the invested capital (including a severely penalizing mechanism in cases where returns fall below certain thresholds for ordinary members);
(iv) the absence of explicit clauses linking the extra return to the performance of work over a specific period.

In this case, these factors are considered sufficient to classify the income from participatory financial instruments as financial income.

✓ ***Split payment*** **- downward variation note in case of non-payment of consideration - Article 26, paragraphs 2 and 3 of Presidential Decree No. 633 of 1972 (Reply to the request of advance tax ruling No. 210 of 25 October 2024)**

In the reply to the request of advance tax ruling No. 210 dated 25 October 2024, the Tax Authorities provided a favorable opinion regarding split payment, specifically concerning the possibility of issuing a downward variation note in the event of non-payment of the consideration, despite one year having passed since the issuance of the invoice.

The case presented in the tax ruling involves a company that issued an invoice to a party subject to Article 17-*ter* of the VAT Decree but did not collect the requested payment within the subsequent year, as stipulated by the deadline in Article 26(3) of the VAT Decree.

The Tax Authorities clarified that if the payment is not made, in whole or in part, the tax will consequently not be due, either entirely or partially, regardless of the invoice's issuance. Therefore, it is sufficient to issue a downward variation note, even after one year has passed since the original invoice was issued. This constitutes a variation made by the transferor, provided the transferee or principal has not exercised the option to anticipate the chargeability of the tax.

RESOLUTIONS

✓ **Two-year Preventive Arrangement - payment, via F24 form, of the substitute tax under the tax amends regime - Article *2-quater* of Decree Law No. 113 of August 9, 2024 (Resolution No. 50/E of 17 October 2024)**

In Resolution No. 50/E of 17 October 2024, the Tax Authorities established the tax codes for the payment of the substitute tax for taxpayers adhering to the CPB proposal and opting for the special tax amnesty scheme, as provided under Article 2-quater of Decree-Law No. 133 of 9 August 2024, covering the five-year period from 2018 to 2022.

Specifically, those making payments via the F24 form for the substitute tax on income tax, additional taxes, and IRAP should use the following tax codes:

(i) 4074 - CPB - Individuals - Substitute tax on income tax and related surtaxes;
(ii) 4075 - CPB - Non-individuals - Substitute tax on income tax and related surtaxes;
(iii) 4076 - CPB - Substitute tax on IRAP.

In the case of installment payments, interest must be paid under the tax code **"**1668" for using the tax codes in (i) and (ii), or tax code "3805" for using the tax code in (iii).

PROVISIONS

✓ **Provision concerning the reporting of data to the Tax Registry by financial operators under Article 7, paragraph six, of Presidential Decree No. 605 of 29 September 1973 (Provision No. 398752 of 28 October 2024)**

The Tax Authorities, in the Provision No. 398752 of 28 October 2024, introduced the new requirement for financial operators under Article 7, paragraph 6 of Presidential Decree No. 605 of 29 September 1973, mandating them to report, alongside balances, movements, and average holdings of financial relationships, the value of government securities held by natural persons at the end of the year to which the report pertains.

For data concerning FY 2023, the deadline for submitting the required information is 31 December 2024. Reporting for FY 2023 is only permitted via extraordinary submission (update or replacement), as the consolidation period, as referenced in point 6 of Revenue Agency Order No. 18269 of 10 February 2015, has already expired.

It is important to note that the Tax Authorities' Data Flow Interchange System (SID) must be used for submitting the communication after accreditation to the service. The person submitting the communication must also possess a valid signature and encryption certificates from the Tax Authorities at the time of submission. Additionally, the specific software made available in the reserved area for SID users must be run in advance to ensure formal verification of the file, including its compression, encryption, and signing with the certificates issued by the Tax Authorities to the submitter.

CIRCULARS

✓ **Article *2-bis* of Decree Law No. 113 of 9 August 2024, converted with amendments by Law No. 143 of 7 October 2024 - Provisions on benefits paid to employees (Circular No. 19/E of 10 October 2024)**

The Tax Authorities have clarified the requirements for the one-time Euro 100 allowance, introduced by Article 2-*bis* of Decree-Law No. 113 of 9 August 2024, for employees in FY 2024. The following conditions must be met to qualify for the allowance:

(i) total income not exceeding Euro 28.000 for FY 2024;
(ii) gross tax on employee income (under Article 49 of the TUIR, excluding pension income) greater than the deduction due under Article 13, Paragraph 1 of the TUIR. The Euro 75 reduction provided by Article 1, Paragraph 3 of Legislative Decree No. 216 of 30 December 2023, does not apply;
(iii) family composition: the worker must have either (a) an unseparated spouse and at least one dependent child (whether born out of wedlock, recognized, adopted, or fostered), or (b) be a single parent with at least one child who is a tax dependent, as specified in Article 12(1)(c) of the TUIR.

However, the allowance is not payable if the tax-dependent child has two parents who have recognized and:

(i) the employee cohabits with the child and the other parent in a stable emotional relationship, whether or not formalized in the municipal registry;
(ii) the worker lives with the child and a third person in a loving relationship, whether or not declared in the municipal registry, and is separated from the other parent.

As stated by the Tax Authorities, the allowance will be disbursed alternatively in one of two ways (a) directly in the paycheck, with the 13th-month pay, or (b) through tax returns, as in the case of domestic workers.

CASE LAW UPDATE

✓ **Documents requested by sending a questionnaire: failure to send in the time limit is equivalent to refusal (Supreme Court, Sentence No. 26133, 7 October 2024)**

In Sentence No. 26113 of 7 October 2024, the Supreme Court ruled that when the tax Authorities requests documents from the taxpayer by sending a questionnaire, pursuant to Article 32 of Presidential Decree No. 600 of 1973 or Article 51 of the VAT Decree, failure to respond within the allotted time frame constitutes a refusal. As a result, the requested documents become inadmissible in both administrative and judicial proceedings.

Conversely, if the request is made during an access, inspection, or verification activity under Article 33 of Presidential Decree No. 633 of 1973, the failure to provide the documents prevents them from being considered in the taxpayer's favor. In such cases, it is deemed a substantive refusal to make the documentation available, and the Tax Authorities are responsible for proving the relevant factual conditions.

✓ **Full holders: judgment suspended pending decision of the Court of Justice of the European Union (Council of State, Order No. 8248, 15 October 2024)**

With Order No. 8248 of 15 October 2024, the Council of State ruled on the appeals filed by Unione Fiduciaria S.p.A. and other fiduciary associations for the reform of the judgments issued on 9 April 2024 by the Lazio Regional Administrative Court (TAR), concerning the appeal against Ministerial Decree No. 55 of 11 March 2022 on the Register of beneficial owners (and, in particular, the communications to be made to the same) in relation to which the Council of State had granted the precautionary requests suspending their enforceability.

In that order, the Council of State suspended the trial and referred six questions to the European Court of Justice for a preliminary ruling, taking into account the uncertainties in the interpretation of European and national legislation dictated in this area.

The six questions in relation to the Register of Effective Holders pertain to (i) the notion of "*legal institutions*" provided for in Directive (EU) 2015/849, as amended by Directive (EU) no. 843/2018; (ii) the normative or reconnaissance scope of the identification of related legal institutions carried out by the national legislator and verified by the European Commission; (iii) the similarity of the structure and functions of the trust mandate entered into by trust companies to those of the trust; (iv) the proportionality of the inclusion of the trust mandate among the legal institutions similar in structure or functions to the trust; (v) the invalidity of certain provisions of Directive (EU) no. 849/2015 for being contrary to Articles 114 and 288(3) of the Treaty on the Functioning of the European Union and the "*principle of effet utile*"; (vi) the compliance of Article 21(4)(*d-bis*) of Legislative Decree No. 231/2007 and Article 7(2) of Ministerial Decree No. 55/2022 with Directive (EU) No. 849/2015, in light of the guidance provided by the judgment of the Court of Justice of the EU of 22 November 2022, Joined Cases C-37/20 and C-601/20.

Pending the EU Court of Justice's ruling, therefore, the obligation of companies, including trust companies, to report information on beneficial owners to the appropriate registry also remains suspended until the Court's decision.

✓ **Material error in F24 form with compensation: correction allowed (Supreme Court, Sentence No. 27332, 22 October 2024)**

In Supreme Court Ruling No. 27332 of 22 October 2024, the Supreme Court addressed whether taxpayers could correct material errors in F24 forms. The case involved a company that had erroneously reported a tax credit for employment increases instead of a VAT credit. Although the error was later corrected, the Tax Authorities had issued a recovery notice.

The Supreme Court overturned the unfavorable decisions from previous instances, ruling that tax declarations, such as those in F24 forms, do not constitute acts of negotiation but are simply declaratory acts. These acts can be amended if they result in undue burdens on the taxpayer. According to the Court, the correction of such errors is legitimate, and the Tax Authorities must account for these corrections, annulling recovery actions based on the initial erroneous declarations. This ruling reaffirms the principle of cooperation between the IRS and the taxpayer, as well as the protection of good faith.

✓ **Asymmetrical demerger of enjoyment company circumvents liquidation (Supreme Court, Sentence No. 27870, 29 October 2024)**

In Sentence No. 27870, filed on 29 October 2024, the Supreme Court of Cassation deemed an asymmetrical demerger transaction as elusive, where the two shareholder companies of the demerger were the beneficiaries. The Court found the transaction to be elusive because it lacked valid economic reasons (which, instead, the plaintiff argued were due to the need to resolve management issues caused by partner disagreements). The sole purpose of the demerger was to improperly exploit the neutrality of the process and circumvent the liquidation regime.

The Supreme Court identified the elusiveness based on the company's history of allocating property to its partners—property that had never been used in economic activity but was instead granted for their personal use without charge. The company had always operated "*outside of any market logic*".
Thus, the Supreme Court clarified that it is not the demerger itself that is inherently evasive, but rather the use of the demerger by a company that "*has never engaged in business activities, merely granting free use of its property to its shareholders*".

✓ **Legitimate non-deductibility of IMU from IRAP (Constitutional Court, Sentence No. 171, 29 October 2024)**

Sentence No. 171 of the Constitutional Court, filed on 29 October 2024, confirmed the constitutional legitimacy of specific regulations regarding IMU and IRAP. Specifically, the Constitutional Court upheld Article 14, paragraph 1 of Legislative Decree No. 23 of 14 March 2011 and Article 5, paragraph 3 of Legislative Decree No. 446 of 18 December 1997, which stipulate that IMU related to capital properties is non-deductible from the IRAP tax base.

The Constitutional Court addressed several claims of alleged constitutional illegitimacy raised by lower courts, declaring them either inadmissible or unfounded. Among the arguments, the Court reaffirmed what had already been stated in Judgment No. 21/2024, clarifying that the principles related to IMU deductibility, as outlined in Judgment No. 262/2020 (which focused on IRES regulations), cannot be applied to IRAP. This is due to the fact that the criteria and logic for deducting negative components under IRAP differ from those under IRES.

In essence, the Constitutional Court affirmed that the current legislation, which prohibits the deduction of IMU for capital properties for IRAP purposes, is constitutionally valid and does not conflict with the principles established in previous rulings by the same Constitutional Court.

✓ **Fraudulent declaration if invoice payments result from false bank masters (Supreme Court, Sentence 39971, 30 October 2024)**

In Sentence No. 39971 of 30 October 2024, the Supreme Court ruled that the crime of fraudulent misrepresentation applies, rather than the lesser crime of misrepresentation, when accounting ledgers are falsified to include non-existent passive invoices or to artificially inflate VAT credits.

In this case, two entrepreneurs were charged with fraudulent misrepresentation under Article 3 of Legislative Decree No. 74 of 10 March 2000, due to falsifying entries in accounting records and specifically, recording passive invoices that were never issued by suppliers and inflating VAT credit. These actions were considered fraudulent behavior.

Initially, the trial court recharacterized the crime from fraudulent misrepresentation (under Article 3) to the lesser offense of false declaration (under Article 4), acquitting the defendants due to failure to exceed the threshold for punishability. However, the Court of Second Instance reformed the judgment, finding the defendants guilty of fraudulent misrepresentation.

In the Cassation appeal, the Supreme Court clarified that misrepresentation is distinct from fraudulent misrepresentation due to its residual nature, as outlined in the ruling "*outside the cases provided for in Articles 2 and 3*". Specifically, Article 4 of Legislative Decree No. 74 applies only when none of the following actions are involved:

(i) the use of invoices or documents for non-existent transactions, relevant to Article 2;
(ii) the performance of simulated transactions or use of false documents or fraudulent methods that hinder tax assessments and mislead the Tax Authorities, complementing Article 3.

According to the Supreme Court, the more serious crime under Article 3 applies in this case because the defendants falsified bank records to create false evidence of payments for simulated invoices issued by seemingly legitimate entities. This conduct required further investigation by auditors to verify the invoices' authenticity, beyond just the apparent accounting and tax position of the accused.

EUROPEAN UNION

✓ **Deduction of input VAT paid (EU Court of Justice, No. C- 475/23, 4 October 2024)**

In the ruling of 4 October 2024 (stemming from Case C-475/23) the Court of Justice of the European Union ruled on the admissibility of VAT deduction in cases where the taxable person grants the subcontractor a free-of-charge asset that is indispensable for the production of the final product intended for sale.

Specifically, after going over the requirements and purposes pursued by the VAT regulations, it was stated that for the recipient to be entitled to deduction, there must be a direct and immediate link between a specific upstream transaction and one or more downstream transactions. The right is also recognized if the costs incurred are part of the taxable person's overhead and, consequently, stand as constituent elements of the price of the goods or services supplied.

Finally, the ECJ specified that it is contrary to EU law for Member States' legislation to impose additional formal conditions-such as, in the present case, the keeping of separate accounts for the foreign permanent establishment-to verify compliance with the prescribed substantive requirements, if the existence of the latter can be inferred from information already in the possession of the Tax Authorities: the imposition of such additional constraints could otherwise have the effect of nullifying the exercise of the right itself to deduct.

OTHER

✓ **Nature of amounts paid to settle tax disputes (Norm a of conduct No. 226)**

Article 1, paragraph 186, of Law No. 197 of 29 December 2022 provides that disputes pending as of 1 January 2023, attributed to the tax jurisdiction in which the Tax Authorities or the Customs and Monopolies Tax Authorities is a party, may be settled by the payment of a fee equal to the value of the dispute, understood to be net of interest and any penalties imposed by the contested act. On this issue, the Italian Association of Chartered Accountants has provided some important guidance on the nature to be attributed to the sums thus paid through the issuance of Conduct Rule No. 226.

In particular, it stated that they retain the same legal nature as the contested tax, thus confirming themselves as taxes. Moreover, this would be confirmed both by the literal sense of the provision and by the *ratio legis* common to all forms of tax amnesty and amnesty, as well as by some previous documents of administrative practice concerning the facilitated definition of 2018, which is similar in substance to the definition of 2023. Similarly, it follows that the payment aimed at the definition of disputes involving only the penalty will also be classified as a penalty.

✓ **Entities liable for split payment: availability of 2025 lists (2025 lists)**

The Department of Finance has made available the 2025 lists of entities (companies, organizations, and foundations) required to apply split payment, as provided by Article 17-*ter*, paragraph 1-*bis* of the VAT Decree. These lists can be accessed in the appropriate section of the website.

Interested parties may report any missing or incorrect entries in the lists by submitting the necessary supporting documentation, using the designated application form. The entities in question include:

(i) de facto subsidiaries of the Prime Minister's Office and ministries;
(ii) entities or companies controlled by the central government;
(iii) entities or companies controlled by local governments;
(iv) entities or companies controlled by the National Pension and Welfare Authorities;
(v) entities, foundations, or companies in which at least 70% of the total capital is held by the General government;
(vi) listed companies included in the FTSE MIB index of the Italian stock exchange.

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