Studio Tributario e Societario

Tax Alert

STS Deloitte’s newsletter

N. I | April 2024

Deloitte.

In this number:

Direct Tax

Tax Treatment of accounting errors | Revenue Agency Resolution n. 73/2024

In ruling no. 73 of 21 March 2024, the Italian Tax Authority provided an important clarification regarding the tax effects of the correction of (significant) accounting errors; specifically, it considered deductible a contingent liability originating from the correction of real estate leasing fees relating to the financial years 2019, 2020 and 2021. This correction integrated, with the recognition of a "cumulative" negative income component in the opening balance of the 2022 financial statements, the fees (erroneously) attributed to a lower amount in each relevant FS.

In particular, the Tax Authority states that the amounts recorded (in the opening balance of the 2022 balance sheet) integrating the fees of the aforementioned previous periods are deductible by derivation in 2022 through *"...a decreasing tax change (for IRES and for IRAP purposes), equal to the amount (of the sum, ed.) of the costs of previous years... without the need to file the corresponding amended tax returns".*

The answer, it is believed, can also be considered valid for other kinds of components accrued according to a periodic basis (such as, for example, depreciation).

Amendments to OIC and tax reflections

On March 18, 2024, the OIC (Italian Accounting Organism) published the final version of amendments to the accounting principles.

The final version of the amendments has substantially confirmed the proposals that the OIC had already advanced in the document made available for consultation in 2023.

A first set of amendments concerned OIC 12, 15, and 19. Here, the OIC, in line with the provisions of the recent OIC 34 on revenues, has eliminated the distinction between trade discounts and financial discounts, reaffirming that all discounts should be accounted for as a reduction of revenues. Changes in the expected financial flows of a credit already recognized in the balance sheet are recorded as financial components.

For tax purposes, the amendments to the accounting principles OIC 12, OIC 15 and OIC 19, which distinguish between discounts of commercial nature (to be accounted for as a reduction in revenues) and discounts of financial nature (to be accounted for as a financial charge) are adopted according to the principle of strengthened derivation pursuant to art. 83 of the TUIR.

Consistent with OIC 34, paragraph 56 relating to surpluses on guarantee funds of OIC 12 was amended regarding the line item "Other revenues and income," specifying the classification of surpluses from provisions, stating that the only case of a provision for guarantee recognized in the balance sheet is that related to legally required guarantees, while all other forms of guarantees provided to the customer are treated as a separate sales service and, therefore, are accounted for in line item A1 of the income statement. The last amendment to OIC 12 related to OIC 34 concerned paragraph 84, modified to clarify that line item B14 should only include penalties that do not arise from sales contracts per OIC 34. These clarifications are applicable from the financial year beginning on January 1, 2024.

Even these latest changes, while waiting for the tax approval decree provided for by the art. 4, co. 7-bis, of Legislative Decree n. 38/2005, could be tax-relevant in a strengthened derivation.

The amendments to OIC 25 concerning Pillar 2 have also been confirmed. In the income statement line item 20, "income taxes for the year," an additional sub-item called "current taxes Second Pillar" has been added. Paragraph 2A reiterates the prohibition of deferring taxes on the imposition generated by the Pillar 2 rules. In the explanatory notes, the company must illustrate how much of the income taxes resulting from the application of the Pillar 2 rules are on its own income and how much on the income of other companies belonging to the group. Moreover, under the new paragraph 93B, in the financial statements closed after the entry into force of the Pillar 2 rules but before the effective date of the imposition resulting from the application of such rules, the explanatory notes provide information about the inclusion of the company within the scope of these rules and a description of the progress of their implementation process. The amendments related to Pillar 2 are applied immediately after their publication, i.e., in the financial statements approved after March 18, 2024.

However, the amendments concerning decommissioning and dismantling consts, which under the new paragraph 32 of OIC 16 are capitalized in the initial cost of the asset, are applicable from the financial year beginning on January 1, 2024. These costs are recognized at the time the obligation to dismantle the asset and/or restore the site where the asset is located arises, with a corresponding entry to a provision. Subsequent updates to the initial estimate of dismantling and/or restoration costs are made as an increase or decrease of the asset to which they refer, except for adjustments that result from the consideration of the time factor, to be charged to the income statement.

For tax purposes, the higher value of the asset must be considered fiscally recognized as a result of the enhanced derivation principle; the recognition of the higher value, specifically, is one of the qualification phenomena (see in this regard the notes

to Decree no. 48 of 1 April 2009 which contains implementation rules of the aforementioned principle of strengthened derivation also valid for OIC adopters). Likewise, the related fund will be considered fiscally recognized (deducted).

Upon first application of the new accounting rules, in the absence of a specific realignment regime, the recorded values (higher cost of the asset and corresponding amount of the fund), in relation to operations still in progress, must be sterilized and managed according to the different book to tax values.

Ires – Allowance for Capital Equity (ACE) reduction for subscription of certificates of deposit | Italian Tax Authority Ruling No. 31/2024

Anti-avoidance rules for Ace purposes stipulate, for entities other than banks and insurance companies, that the increase in equity capital has no effect up to the amount of the increase in the holdings of securities as compared to those shown in the financial statements for the year ending December 31, 2010.

In the case under question (ruling no. 426/2023. 7, 2024), a company subscribed to several certificates of deposit issued by a bank with identical contractual terms, such as:

- term of the bond (18 months);
- granted interest rate (3 percent per annum);
- semi-annual periodicity of yield payment;
- non-transferability in the market of the bond;
- protection by the Interbank Deposit Protection Fund.

The Agency notes that partial or total withdrawals of deposited amounts before the maturity of the certificate are excluded; in addition, any early termination of the contract is subject to specific notice periods and to the payment of a fee.

Relying solely on this aspect, Instead of the wording of the provision that includes in the notion of securities and transferable securities those under art. 1, paragraph 1-bis, of Legislative Decree no. 58/1998, the Agency comes to a surprisingly restrictive conclusion, arguing that the subscription of certificates of deposit does constitute an increase in ''passive'' financial assets that must be neutralized for the purposes of ''innovative'' and ordinary ACE.

Business contribution - Subsequent transfer of shares and simulation of transactions - Supreme Court Order No. 1257/2024

A Supreme Court (order no. 1257of Jan. 11 2024) has confirmed an assessment to an entrepreneur who contributed her firm to a company and subsequently sold the shares thus received to the other shareholders. According to the Office, the entrepreneur had pre-established the means to simulate a capital gain from participation rather than a capital gain from the sale of the firm, which is subject to much more onerous taxation.

In fact, it is necessary to consider that the case under assessment has two features:

a. in the first respect, it seems arduous to argue that there is simulation in the presence of quite distinct legal transactions, producing real effects and involving third parties;

b) secondly, this is a situation clearly envisaged and regulated by the legislator (Art. 176, par. 3, Tuir), which expressly wished to exclude the elusive nature of a transfer of shares subsequent to the contribution of the firm.

Therefore, in light of the facts and the current rules, the Supreme Court's ruling, in any case rather surprising, can be considered relevant only from a procedural perspective, in the sense that the Supreme Court cannot enter into the evaluation "of the elements already submitted to the attention of the Judges of the merits" to exclude the existence of the simulated transaction.

New deadlines for tax returns | Changes made with Legislative Decree no. 1/2024 and no. 13/2024

With Legislative Decree no. 1/2024 (so-called *"Decreto Adempimenti")* – published in the O.G. no. 9 of 1/12/2024 – the ordinary deadlines for submitting tax returns were changed.

In particular, according to Article 11 of the "*Decreto Adempimenti",* the Article 2, paragraphs 1 and 2, of Presidential Decree no. 322/1998 was modified and it states that, with effect from May 2nd, 2024:

- for individuals, as well as partnerships and equivalent entities, the deadline for submitting the tax return electronically expires on September 30th (instead of November 30th);
- for IRES subjects, the deadline for submitting the tax return electronically expires on the last day of the ninth month following the closing month of the tax period (instead of the eleventh month). By rule, for entities whose fiscal year is in line with the calendar year, the deadline for submitting the return is set for September 30th.

It should be noted that, for IRES taxpayers whose fiscal year is not in line with the calendar year, for which the deadline for submitting income tax returns and IRAP returns relating to the tax period prior to the one period running on December 31st, 2023, expires after May 2nd, 2024, the submission deadlines in force before the same date continue to apply for the mentioned tax period.

Notwithstanding the above provisions, for the only tax period in progress on December 31st, 2023, income tax returns and IRAP returns must be submitted within the following deadlines (see Article 38 of Legislative Decree no. 13/2024 in O.G. no. 43 of 2/21/2024):

- October 15th of the year following the year in which the tax period ends, for individuals, as well as partnerships and equivalent entities;
- the fifteenth day of the tenth month following the closing month of the tax period, for IRES taxpayers.

Therefore, for the FY2023, a IRES taxpayer with a tax period in line with the calendar year must submit the return electronically by October 15th, 2024. A IRES taxpayer, on the other hand, with a tax period from July 1st, 2023, to June 30th, 2024, must submit the tax returns by April 15th, 2025.

However, the terms provided by Articles 5 and 5-bis of Presidential Decree no. 322/1998 and subsequent amendments in cases of liquidation, transformation, merger or total demerger remain unchanged.

It should be noted that, with the anticipation of the deadlines for the submission of the income tax return and IRAP return, it is suggestable to anticipate all the analyses necessary to draft the appropriate documentation where the affixing of a time stamp is required; for example, of the so-called penalty protection regime in terms of transfer pricing, new Patent box, etc.

Finally, it should be noted that, for the tax period in progress on December 31st, 2024, income tax returns and IRAP returns must be submitted considering the following deadlines (see Article 38 of Legislative Decree no. 13/2024 in O.G. no. 43 of 02/21/2024):

- individuals, as well as partnerships and equivalent entities, if they submit the return through an office of "Poste Italiane S.p.A." from April 15th to June 30th, 2025, or electronically from April 15th to September 30th, 2025;
- IRES subjects with a calendar tax period from April 15th to September 30th, 2025.

The withholding agents' tax returns must be submitted electronically from April 15th to October 31st, 2025.

Amendments to OIC 25 - Representation in the financial statements of the effects of the entry into force of the Global Minimum tax

In line with the amendments to IAS 12 made by the IASB, the Italian Accounting Board (OIC), on March 18, 2024, published the final version of the amendments to OIC 25 - Income Taxes.

The amendments regulate, in particular, the methods of accounting and recognition of taxes resulting from the entry into force of the rules set out in the Pillar 2 project of the OECD, as implemented by EU Directive 2523/2022 and, subsequently, introduced into Italian law by Legislative Decree 209/2023. This set of rules is intended to ensure a minimum effective tax rate (15%) for multinational (and domestic) groups of companies with a consolidated turnover of at least EUR 750 million.

The entry into force of the rules referred to in the Legislative Decree 209/2023 takes effect on December 31, 2023. Therefore, for companies with fiscal year corresponding to the calendar year, fiscal year 2024 is the first period of application.

Through the amendments, the OIC, in primis, has introduced a temporary exception - similar to the amendments to IAS 12 - to the recognition of deferred taxes related to the entry into force of Pillar 2. Moreover, it has been clarified that any current taxation connected with the implementation of the above-mentioned provisions must be classified, under item 20 - Current, Deferred and Prepaid Income Taxes for the Year of the P&L and separately disclosed as *"Current Pillar 2 Taxes"*. The disclosure provided in the Financial Statements ("FS") must also include the distinction between the portion of Top-up Tax related to the company's own income and that related to income of other group companies. Considering the effective date of entry into force of the rules set forth in Legislative Decree 209/2023, the effects in terms of current taxes will be applicable, for the first time, in the 2024 FS for calendar year companies.

Lastly, for companies that prepare FS in the ordinary form, it is mandatory, in the FS for a fiscal year ended after the entry into force of Pillar 2 rules but before the period of effectiveness (i.e.; 2023 FS for calendar companies), that the Explanatory Notes provide proper disclosures regarding *(i)* the inclusion of the company in the scope of application of the Pillar 2 rules and *(ii)* the progress of the process of analyzing the effects that the Pillar 2 rules will have on the company.

European Delegation Law 2022-2023 | Delegation to the Government for the Transposition of European Directives and Implementation of Other Acts of the European Union

Within the framework of the obligation to align domestic legislation with that of the European Union, Law No. 15 of February 21, 2024, delegating to the Government the transposition of European directives and the implementation of other regulatory acts of the European Union, was published in Official Gazette No. 46 of February 24, 2024.

The European Delegation Law 2022-2023 is structured in 19 articles divided into three main sections: “General provisions for the transposition and implementation of acts of the European Union”, “Delegations to the Government for the transposition of European directives”, and “Delegations to the Government for the alignment of national legislation with European regulations”. The law provides specific guiding principles and criteria for the transposition of 10 directives and the alignment with 7 European regulations. Additionally, Annex A lists 7 directives for which specific guiding principles and criteria are not provided, but the general ones specified in Law No. 234 of 2012 apply.

As for the tax system, in Annex A of the measure, it is worth mentioning the delegation to the Government for the adoption of Directive (EU) No 2021/2101 that introduces the obligation of Public Country-by-Country reporting for multinationals (with consolidated revenues exceeding EUR 750 million) in order to render the tax system more transparent, to strengthen public control of the taxes paid by multinational companies and to promote an informed debate on the level of compliance with the tax obligations of certain multinational companies active in the EU.

Furthermore, the same Annex A delegates the adoption of Directive (EU) No. 2022/542 amending Directives 2006/112/EC and (EU) 2020/285 on VAT rates. More specifically, the new rules, aimed at ensuring the functioning of the internal market and mitigating competitive distortions, modify the structure of reduced and super-reduced rates by providing that EU Member States may avail themselves of no more than two reduced rates of not less than 5 per cent, a super-reduced rate of less than 5 per cent and a zero rate, i.e. an exemption with the right to deduct input VAT.

Indirect Tax |VAT

Late vat deduction exercised through the integrative vat return | Revenue Agency Resolution no. 479/2023

Italian Tax Authorities (hereinafter “ITA”) clarified the conditions allowing the exercise of the right of VAT deduction by submitting an Integrative VAT Return.

In detail, company ALFA transferred a going concern to BETA following a demerger transaction occurred in September 2021. ALFA highlighted that after the demerged and still during 2021 it received and recorded in its input VAT ledger (deducting the relevant VAT) input invoices wrongly addressed to ALFA but belonging to BETA. In April 2022 ALFA realized the mistake and regularized the undue VAT deduction, by paying VAT, plus penalties and interest, before the submission of the Annual VAT Return FY2021.

However, after submitting the VAT Return for FY2021, ALFA realized that amongst the regularized invoices there were also no. 3 invoices that shouldn’t have been included in the regularization process, and that were initially correctly deducted from ALFA. Therefore, ALFA submitted a ruling to ask the ways to recover such VAT.

ITA recalls Circular no. 1 of 2018 which summarize the general rules of VAT deduction, remembering that, pursuant to art. 19 of Presidential Decree n. 633/1972 (hereinafter the “VAT Decree”), the dies a quo to exercise the right of deduction must be identified when both of the following conditions occur for the purchaser: (i) substantial requirement related to the occurrence of the transaction; (ii) formal requirement of possession of a valid invoice.

Therefore, the purchaser can deduct the VAT of the invoices received:

- from the moment in which the tax is due;
- if there is a valid invoice;
- after recording the same in the VAT ledgers;
- no later than the deadline for submitting the VAT Return of the FY in which such invoice was received.

ITA also clarifies that the effectiveness of the right of deduction and the neutrality principle are guaranteed by the Integrative VAT Return according to which it is possible to amend errors or omissions that have determined the indication of a higher taxable amount, a higher VAT debt or a lower VAT credit, no later than the statute of limitation set forth by art. 57 of VAT Decree (i.e. by December 31 of the fifth year following the year in which the original VAT Return was submitted).

According to the considerations set out above, ITA clarified that even if the purchaser fails to exercise the right of VAT deduction promptly (i.e. by the date of submission of the VAT Return of the year in which these conditions occurred), the taxpayer is allowed to recover the non-deducted VAT by submitting the Integrative VAT Return. In this regard, ITA recognized the possibility to ALFA of deducting the VAT related to the 3 invoices wrongly regularized, without application of any penalty since such 3 invoices were *"regularly recorded".*

Split payment operations – refund of excess paid vat | Revenue Agency Resolution no. 482/2023

ITA (Italian Tax Authority) clarified how to recover excess VAT paid through the split payment mechanism.

More in depth, a Municipality settled its commercial debts with the relevant suppliers (decreasing the amount paid in respect of the one due based on the original invoices), benefiting of the contributions set out by art. 1, par. 567-580 of law no. 234/2021.

Following the payments to suppliers (which occurred between June 2022 and February 2023), the Municipality had paid VAT directly to the Revenue pursuant to art. 17-ter of VAT Decree. However, in the absence of credit notes issued from the suppliers, the VAT was calculated and paid to the Revenue on the amount resulting from the original invoices (prior to the settlement), rather than on the VAT settled and effectively paid.

The Municipality clarified that it paid the VAT due based on the original invoices rather than the one effectively paid based on the settlement to have a prudential approach and avoid penalties for omitted VAT payment. Considering, however, that the VAT payment should have been done based on the amount actually paid even in the absence of a credit note ex. art. 26 of the VAT Decree.

The Municipality asked to ITA if the VAT paid in excess could be recovered from the future monthly computations or requested for refund.

First of all, ITA clarifies that the obligation to pay VAT under the split payment regime generally arises with the payment of the consideration, therefore, the Municipality should have paid the VAT for the amounts settled actually paid and not for those indicated in the original invoices. Therefore, in the case at stake there is an undue payment, against which a credit note has not been issued by the supplier.

In general, even in relation to undue VAT payments made under the split payment regime, the use of variation notes is permitted, even if, as in the case at stake, the original transaction was cancelled, in whole or in part, following an agreement between the parties.

In fact, the procedure implemented by the Municipality precisely defines the timing, methods, and conditions of the settlement deed, it also shows the "cause" and the "prerequisite", so that it cannot be said that the agreement arose according to the parties' will. Consequently, in such a case, the one-year deadline starting from the transaction according to art. 26, par. 3, of VAT Decree for the purposes of issuing a credit note related to an agreement between the parties has already expired due to circumstances not attributable to the parties.

Therefore, having excluded the possibility of deducting the excess VAT paid from the future VAT payments in split payments, ITA clarified that it is only possible to submit a refund request pursuant to art. 30-ter of VAT Decree.

Vat credit restoration if the company returns to be "operative" | Revenue Agency Resolution no. 10/2024

ITA clarifies that the VAT credit resulting from the annual VAT Return requested for reimbursement and subsequently challenged for the lack of the conditions referred to in Article 30 of Law 724/94 (non-operative companies) can be "regenerated", subject to repayment of the amount reimbursed, in the event that, in the following years, the taxpayer was found to be adequate and consistent for the purposes of sector studies.

In the case at stake, ALFA received during 2014 a deed of assessment related to the repayment of the VAT refund for FY2009, for an amount equal to euro 140,000.00, based on the fact that it was considered as being a non-operative company, under art. 30 of law no. 724/1994.

ALFA appealed the deed and the Supreme Court of Cassation rejected the appeal, determining ITA's right to collect the amount requested. ALFA divided the amount due into 72 instalments.

ALFA's position for the three-year period 2009, 2010 and 2011, to meet the requirement of operative companies was as follows:

- 2009 shell company;
- 2010 shell company;
- 2011 exclusion/non-application of the provisions of the art. 30 of law no. 724/1994 for companies that are appropriate and coherent for the purposes of sector studies.

Therefore, the VAT credit for 2009 equal to € 140,000.00 once repaid in instalments, could have been freely used.

Therefore, ALFA asked to ITA how to reactivate the VAT credit.

ITA first of all clarifies that failure to pass the so-called "operational test" entails, for VAT purposes, the unavailability of the VAT credit resulting from the annual VAT Return, that cannot be: (i) requested for refund, (ii) offset (iii) sold pursuant to art. 5, paragraph 4 - ter, of Legislative Decree. n. 70/1988.

Furthermore, ITA recognized the fact that for FY2011 ALFA was an operative one and, therefore, the VAT credit can be regenerated only after repayment of the monthly instalments.

It follows that, limited to the instalment sums actually paid each year, ALFA will be able to indicate, in line VL40 of the annual VAT Return, the "restored" VAT credit quota, which will consequently flow into VX section and asked for refund or offset.

Incorrect application of reverse charge - recovery of vat paid in a pro-rata scenario | ruling answer no. 20/2024

ITA analyses the case of VAT application further to an assessment (art. 60 par. 7 of VAT Decree) to a company subject to the pro-rata mechanism (suffering of a limited VAT deduction).

In detail, ALFA reports that it has entrusted the renovation, expansion and creation of new spaces works for its buildings to BETA supplier, and these works were carried out during the years 2015, 2016 and 2017. However, during the same years, a tax report was issued against BETA in which it was challenged the wrong application of "reverse charge" instead of the application of VAT according to ordinary rules.

Following the issuance of the deed of assessment to BETA, with reference to the restructuring interventions, only the penalties set forth by art. 6, par. 9-bis2 of Decree no. 471/1997 were imposed, without any VAT recovery. Differently, as per the supply with installation and technical consultancy, also the relevant VAT due was recovered, pursuant to art. 21 of VAT Decree.

During the years of the assessment, ALFA integrated the invoices received from the supplier with VAT, in application of the reverse charge mechanism pursuant to art. 17, paragraph 6, letter a-ter), of VAT Decree.

ALFA's main activity consists in rendering exempt transactions, Furthermore, the applicant points out that its main activity consists in carrying out both exempt and taxable services, therefore the purchase invoices received in "reverse charge" were subject to the pro-rata limitation and the related VAT was almost entirely paid to the Revenue.

Having said this, ALFA would like to understand how to recover the VAT that will be charged by the provider according to art. 60, par. 7 of VAT Decree.

ITA clarifies that for the purchaser the right to deduct VAT can be exercised "under the conditions existing at the time of carrying out the original transaction", i.e. by applying to the VAT applied the pro-rata of the year of the assessment notified to the supplier. It cannot be taken into account the pro-rata deduction of the year in which VAT was paid to the supplier further to the assessment (art. 60, par. 7 of VAT Decree).

It is not even permitted to recover as a deduction directly in the Annual VAT Return the VAT that was already paid following the wrong reverse charge application and then recharged again by the supplier.

ITA mentions that to guarantee VAT neutrality this amount may be requested for reimbursement, pursuant to art. 30-ter, of VAT Decree, pursuant to which the taxable person can present the request for reimbursement of the undue VAT within two years from its payment or, if later, from the day in which the conditions for the return occurred.

Possibility to issue a credit note for the purchaser - exclusion | ruling answer no. 29/2024

ITA clarifies that only the supplier is entitled to issue a credit note, not also the purchaser.

In the case at hand ALFA is operating in the electricity and gas sector, mainly dealing with the procurement, intermediation and sale of these goods. BETA, a gas distributor, issued invoices to ALFA, including the "gas social bonus and UG2c contribution", which allowed ALFA to accrue a considerable credit towards BETA. However, during 2023 BETA was admitted to the insolvency procedure for composition with creditors, therefore ALFA asked ITA if it was possible to recover the VAT credit by issuing credit notes.

ITA clarifies that the possibility of independently rectifying the invoice, even if the VAT credit is part of an insolvency proceeding, is "precluded by law" for the purchaser, that only has the possibility to ask for the refund under art. 30-ter of VAT Decree.

VAT: Conditions to benefit of the refund | Revenue Agency Resolution no. 66/2024

ITA denies the purchaser the possibility of exercising the reimbursement action pursuant to art. 30-ter directly towards the Revenue.

ITA preliminarily recalls art. 30-ter according to which:

- Par. 1 allows to submit a request for refund of undue VAT within the deadline of two years from the payment or, if later, from the day in which the conditions for the refund were met;
- Par. 2 provides that where the application of undue VAT is been definitively ascertained by ITA, the request for refund can be submitted by the supplier within the deadline of two years starting from the refund to the client of the sums paid.

Having said that ITA also refers to previous guidelines according to which the VAT refund regulation, in compliance with the principle of tax neutrality, guarantees the seller to obtain a refund of the VAT unduly paid to the Revenue only after that it has been repaid to the purchaser and, it such VAT was wrongly deducted by this latter, it must be also recovered.

It follows that the client is not given any possibility of submitting a direct request for reimbursement to the Revenue. Indeed, on this point the Court of Cassation with the recent decision n. 14838/2023, established that the only person entitled to request reimbursement is the supplier.

ITA highlights that also from the decisions of the Court of Justice it emerges that the supplier who has erroneously paid VAT is entitled to request a refund, while the recipient of the services is recognized the right to exercise a civil action of recovery of the undue amount towards the supplier, and this mechanism is suitable to respect the principles of neutrality and effectiveness, allowing the recipient burdened by the erroneously invoiced tax to obtain reimbursement of the sums unduly paid.

In light of the above considerations, ITA clarifies that the request for reimbursement can only be presented by seller, within the deadline of two years from the refund to buyer of the unduly applied VAT. Buyer/lender only has the possibility of requesting reimbursement of the undue VAT to seller.

EU Court decision no. c-314/2022 of 7 march 2023 – non operative company – limits to offset the vat credit

The Court of Justice clarifies that Italian law related to shell companies (art. 30, par. 4 of Law no. 724/1994) is not compliant with art. 167 of EU VAT Directive no. 2006/112/EC and proportionality and neutrality principles when it provides for the loss of the VAT credit deduction.

Furthermore, Italian law is not compliant with art. 9 of the same Directive, when it denies the qualification of taxable person and provides the loss of the VAT credit if, in three consecutive years, the relevant transactions for VAT purposes carried out are of a value which is not deemed commensurate – in that it is too low – with what may, according to criteria pre-determined by law, reasonably be expected from the available assets and the person or entity concerned is unable to demonstrate the existence of objective circumstances which have caused that result.

The Court specifies that:

- The qualification of taxable person is not recognized under the demonstration that such taxable person carries out VATable transactions, what is relevant is that such person effectively carries out an economic activity;
- The right of deduction cannot be limited if the output transactions are considered of a low amount. It can be only denied if ITA proves a fraud or an abuse of the taxpayer.

VAT news included in Budget Law 2024 (law no. 213/2023) – "Decreto Anticipi" (legislative decree no. 145/2023) – "Decreto Salva Infrazioni (law decree no. 69/2023) – circular no. 3/2024 dated 16 february 2024.

We report the main VAT news:

- Increase of reduced VAT rates for childcare and feminine hygiene products (Art. 1, par. 45)

The VAT rate for the following products has been increased, from 5% to 10%:

- childcare products: milk powder or liquid for infants' feeding, infants' food preparations made of flour, groats, meal, starch or malt extract (all made for retail sales);
- baby diapers;
- feminine hygiene products (e.g. sanitary pads or tampons).

Furthermore, the VAT rate for children car seats has been increased from 5% to 22%.

- VAT rate on pellets (Art. ,1 par. 46)

For the months of January and February 2024 the VAT rate for the supply of pellets is set at 10%, by way of derogation from the 22% ordinary VAT rate (same 10% VAT rates was applicable during 2023).

- VAT relief for supplies of goods to persons domiciled or resident outside EU (Art. 1, par. 77)

It was reduced from EUR 154.94 to EUR 70.00 the total amount of supplies, including VAT, which can benefit from the tax relief provided for by art. 38-quater par. 1 of Presidential Decree no. 633/72, for private individuals domiciled or resident outside the EU who purchase goods for personal or family use, to be carried outside the EU in personal luggage. The new amount limit is applicable for supplies carried out starting from 1 February 2024.

- VAT Payment for the registration of vehicles introduced in Italy from San Marino and Vatican City (Art. 1, par. 94 to 98)

To contrast the VAT evasion on vehicles registered in Italy, formally originating from the Republic of San Marino and the Vatican City, but in fact coming from within the EU, the 2024 Budget Law extends the VAT payment - through the F24 form without offsetting possibility - to vehicles (new or second hand), motor vehicles and their trailers introduced in Italy from the Republic of San Marino and Vatican City.

Consequently, for the purposes of their registration or subsequent transfer in Italy, the VAT payment due on the first domestic transfer must be made using the F24 form with the indication, for each means of transport of the type of vehicle and the amount of VAT paid.

Indirect Tax | Customs

New PEM rules of origin from January 2025

From 1 January 2025, the new "modernized" PEM rules of origin will come into force, following the agreement reached in December among the contracting parties, with the adoption by the PEM Joint Committee of Decision No. 1/2023 on the amendment of the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin (the so-called PEM Convention).

The "modernized" PEM rules, which are substantially aligned to the alternative/transitional rules, will replace the rules of origin currently in force in the Pan-Euro-Mediterranean area from next January. The new rules are generally more flexible, updated and simplified.

Among the most important changes are: less strict product-specific rules of origin, increased general tolerance threshold, partial elimination of the no-duty drawback rule, introduction of full cumulation and simplified proofs of origin.

New Regulation (EU) on deforestation - EUDR

The EU Commission has introduced Regulation (EU) 2023/1115 which introduces specific obligations related to the movement to/ from/within the EU market of certain products and commodities that are associated with deforestation and forest degradation. Economic operators need to demonstrate that those products are free from deforestation and have been produced in accordance with the relevant legislation of the country of origin providing a *due diligence statement.*

The regulation will impact any company that places or makes available on the EU market or exports from the EU the products listed – on the basis of their customs classification – in Annex I of said Regulation that were made from or that were fed with the relevant commodities also listed in Annex I (i.e., cattle, cocoa, soy, coffee, wood, rubber, oil palm)

The measures will be applied with different timing and modalities according to the size of the companies:

- from 30 December 2024, for medium and large enterprises;
- from 30 June 2025 for small and micro enterprises.

13th package of EU sanctions against the Russian Federation

On the occasion of the second anniversary of the invasion in Ukraine, the Council adopted the 13th package of sanctions against the Russian Federation on February 23rd, with Regulation (EU) 2024/745 – which amends Reg. (EU) 833/2014 – and Regulation (EU) 2024/753 – which amends Reg. (EU) 269/2014.

Among the measures adopted, the Regulation (EU) 2024/745 – concerning the trade restrictions – modified the Annex XXIII, Annex VII Part B (export bans), and the list of partner countries for the importation of iron and steel products as referred to in Article 3 g, by adding the United Kingdom. It should be noted that the proof of origin of the steel products used for processing in a third country is not necessary if the product is imported from one of the partner countries (Annex XXXVI, United Kingdom, Switzerland, and Norway).

The Regulation (EU) 2024/753 – concerning subjective sanctions – added 106 new individuals and 88 new entities that are now subject to the freezing of funds and economic resources and are prohibited from making funds and economic resources available. With the adoption of the 13th package of sanctions, there are now over 2000 individuals, legal persons and entities subject to subjective restrictions.

Carbon Border Adjustment Mechanism (CBAM) – second reporting and delayed submission

The deadline for the submission of the CBAM report, related to importations carried out in the first quarter of 2024 (January-February-March) is set at 30 April. The declaration can also be presented by using default values, as set by Reg. (EU)

2023/1773. After the second quarter of 2024, incorporated emissions will only be calculated by using the actual data that will be transmitted by the installation operators of the extra-EU goods.

Operators who have not submitted the CBAM report for the fourth quarter of 2023 by the established deadline (31 January 2024) or need to correct the data submitted are allowed, no later than 31 July 2024, to request the delayed submission of data (justifying the reasons and proceeding to the submission within 30 days of the request) or to make the necessary amendments to the data submitted.

Global Employer Services

Implementation of the first module of the IRPEF reform | Circular Letter of the Tax Authority No. 2/2024

Circular Letter no. 2/E of February 6th, 2024, the Tax Authority provides the first indications regarding the novelties introduced regarding IRPEF by Legislative Decree No. 216/2023 for the implementation of the first module of the personal income tax reform, as represented below in the main areas of intervention.

Re-modulation of IRPEF tax rates and income brackets

The circular letter effectively outlines, limited to the 2024 tax period under temporary provisions, the new income brackets and corresponding rates as follows:

1. 23% for incomes up to 28,000 euro;
2. 35% for incomes exceeding €28,000 and up to 50,000 euro;
3. 43% for incomes exceeding 50,000 euro.

Compared to the provisions of Article 11, paragraph 1, of the Italian Tax Code (TUIR) for the year 2024, there is a reduction in the number of income brackets and corresponding tax rates from four to three.

Modification on employment income deductions and similar incomes

For the year 2024 only under a temporary regime, the deduction for dependent employment pursuant to Article 13, paragraph 1, letter a) of the TUIR is raised from 1,880 euro to €1,955 euro if the income does not exceed €15,000. The circular letter clarifies that with this modification, the amount of income excluded from taxation, known as the "No tax area," is extended up to 8,500 euro for holders of dependent employment incomes and certain similar incomes. Furthermore, for the 2024 tax year, the requirement for recognition of the supplementary treatment is adjusted considering the increase in the deduction for dependent employment.

Revision of the tax deduction regulations

The Decree for the implementation of the Tax Delegation has also made some changes to the tax deduction regulations, providing for taxpayers with a total income exceeding 50,000 euro to reduce the deduction from the gross tax due for the year 2024 by an amount of 260 euro. This reduction relates to expenses for which the deduction is set at 19% (excluding medical expenses), liberal donations to political parties (deduction 26%), and insurance premiums for catastrophic events (deduction 90%).

Adjustment on the regulation to the additional taxes to the IRPEF

The deadline for each Region to increase the regional additional tax rate, with its own law, is deferred to April 15th, 2024.

Main developments regarding indirect taxes | Circular Letter of the Tax Authority No. 3/2024

Circular No. 3 dated February 16th, 2024 provides some clarifications regarding certain provisions concerning VAT, IVAFE and registration tax introduced by the Budget Law 2024, the Anticipated Payments Decree, and the Saving Infractions Decree.

The practical document is divided into thematic areas, which we will outline below, with particular reference to provisions of specific interest to individuals.

Novelties concerning the increased IVAFE

Starting from 2024, the Budget Law raises the annual IVAFE rate to 0.4%, but only for financial activities held in states or territories with privileged tax regimes. Otherwise, the ordinary rate of 0.2% per year continues to apply.

The circular reminds that taxpayers subject to IVAFE include individuals, non-commercial entities, and simple and equivalent companies, according to Article 5 of the TUIR, residing in Italy and subject to tax monitoring obligations under Article 4, paragraph 1, D.L. 167/1990, are liable to IVAFE by completing the RW section of the income tax return form.

Innovations on registration tax for the "first home"

The practical document outlines the criteria for benefiting from the "first home" tax relief for registration tax (TUR) in light of the changes introduced by the “Saving Infractions” Decree regarding transfers for consideration of ownership of non-luxury residential properties and transfers or establishment of bare ownership, usufruct, use, and residence rights related to them, provided for buyers who have moved abroad for work reasons. The new legislation aims to overcome the infringement procedure n. 2014/4075 by the European Commission, according to which Note II-bis), paragraph 1, letter a), first period of the TUR registration tax tariff, implemented discrimination based on nationality against citizens of other States. In the past, non-Italian citizens who did not intend to settle in Italy were excluded from the benefit.

The tax benefit, due to the legislative intervention, is now anchored to a new objective criterion, unlinking it from citizenship, which was the subject of contention. Therefore, individuals who meet the following criteria can access the aforementioned benefit:

- *Have moved abroad for work reasons*: given the different wording of the provision compared to the previous version, the eligibility requirement is deemed to refer to any type of employment relationship, not necessarily subordinate, and must exist at the time of the property purchase. A work-related transfer that occurs after the property purchase does not allow for the use of the tax benefit in question.
- *Have resided in Italy for at least five years or have carried out their activity there for the same period, prior to the property purchase*: this term includes any type of activity, including those performed without remuneration. It is clarified that, for verifying the temporal requirement of residence and the effective performance of their activity in Italy, the five-year period does not necessarily have to be continuous.
- *Have purchased the property in the municipality of birth, or where they had their residence or where they carried out their activity before the transfer.*

It remains essential to fulfill also the conditions referred to in letters b) (absence of other real rights on properties located in the same municipality) and c) (novelty in enjoying the benefit) of Note II-bis, while in this case, it is not required for the taxpayer to establish their residence in the municipality where the purchased property is located.

Welfare and novelties on dependent employment | Circular Letter of the Tax Authority No. 5/2024

Circular Letter No. 5 dated March 7th, 2024 provides operational instructions regarding corporate Welfare initiatives, special supplementary treatment for night and holiday work for employees in the thermal tourism sector, and the redeeming periods not covered by remuneration as introduced in the 2024 Budget Law. Within the scope of measures concerning corporate Welfare, the circular also provides clarifications regarding the modification of determining fringe benefits in case of loans granted to employees, introduced by the Anticipated Payments Decree, and already subject to some clarifications during Telefisco 2024 responses.

Changes regarding the non-taxability of the value of goods provided and services rendered to employees.

The 2024 Budget Law has provided that, only for the tax period 2024 and in derogation from the ordinary exemption limit of €258.23, the last paragraph of Article 51 of the TUIR undergoes two significant modifications regarding both the exemption limit and the objective scope of application of the exemption:

- The exemption limit is differentiated between workers with dependent children (€2,000) and those without dependent children (€1,000).
- The objective scope is expanded to provide that the value of goods provided and services rendered to employees, as well as the sums paid or reimbursed to them by employers for the payment of domestic utilities such as water service, electricity, natural gas, expenses for renting the first home, or interest on the mortgage for the first home, does not contribute to income formation within the overall limit of €1,000 (workers without dependent children) or €2,000 (workers with dependent children).

Regarding the application methods and obligations on the part of the employer, the ordinary provisions remain unchanged. Therefore, exceeding both exemption thresholds (€1,000 without dependent children or €2,000 with dependent children)

results in the entire amount being taxable for both tax and social security purposes according to ordinary procedures, not just the portion exceeding these limits. For the application of the regulation, the employee, to benefit from the enhanced bonus of €2,000, must declare to the employer the right to it, indicating the tax code of the dependent children. Among the novelties introduced by the regulation is the possibility of facilitating, through both direct payment or amount reimbursements, "expenses for renting the first home" or "for interest on the mortgage related to the first home". The regulation refers to the notion of "first home," and on this point, the Tax Authority clarifies that reference should be made to the notion of "*main residence*" provided for the application of deductions under Articles 15 TUIR (interest on loans) and 16 TUIR (rental fees). These expenses must concern residential properties owned or held based on a suitable title, by the employee, spouse, or family members, where the employee or family members (as per Article 12 of the TUIR) habitually reside, provided that they actually incur the related expenses. Regarding "rental expenses," the Tax Authority clarifies that reference should be made to the rent resulting from the registered lease agreement paid during the year. It remains firm that, regarding expenses reimbursed under the aforementioned regulation, the taxpayer cannot benefit from the benefits provided for the same expenses (tax deductions for the main residence) as they cannot be considered as actually incurred and therefore borne by the taxpayer. Concerning the applicability of the benefit, employers provide information to the unions, where present. Finally, it is recalled that the provision under Article 51, paragraph 3 of the TUIR can also be used *"ad personam"* by paying attention only to the economic and family situation of the recipient.

Tax relief of performance bonuses

Regarding the tax relief of performance bonuses, it is clarified that, for bonuses and amounts paid in 2024, the substitute tax rate on performance bonuses and profit-sharing is reduced from 10% to 5%. The provision confirmed by the 2024 Budget Law only provides for the reduction of the substitute tax rate applicable but does not modify the subjective, objective, or procedural scope of the regulation, which remains unchanged. The substitute tax, in force since 2016, applies to the payment of performance bonuses of variable amounts related to increases in productivity, profitability, quality, efficiency, and innovation for a maximum annual amount of €3,000 gross, for employees who in the previous year had dependent employment income not exceeding €80,000.

Changes regarding the determination of in-kind compensation resulting from loans granted to employees.

Decree No. 145/2023 introduced a modification to Article 51, paragraph 4, letter b) of the TUIR regarding the taxation of loans granted to employees, retroactively from the tax period 2023 onwards, to address the fluctuations that between 2022 and 2023 affected, under the previous formulation, the interest differential calculated based on the official reference rate (TUR – official reference rate) in force at the end of each year and those calculated at the effective rate applied to the loan to the employee.

This provision indeed changes the method of determining taxable income, which in the updated version provides that in case of loans granted to employees, the taxable fringe benefit is determined at 50% of the difference between the amount of interest calculated based on the TUR and the amount of interest calculated based on the effective rate applied to the employee, where the TUR to be considered for calculation depends on the type of financing granted as indicated below:

- For variable-rate loans, the reference TUR is that in force on the due date of each installment.
- For fixed-rate loans, the reference TUR is that on the date of granting the loan, with no regard to any subsequent variations.

The circular clarifies that regarding the timing of imputation of in-kind compensation in relation to loans granted to employees and the application of withholding tax at the source, the relevant moment is that of the payment of the individual loan installments, as determined by the amortization schedule, subject to adjustments. The circular letter also provides clarifications in case of renegotiation or substitution of the loan agreement. The provision applies retroactively from the effective date of December 17th, 2023, to all interest paid to the employee during the tax period 2023.

Special supplementary treatment for workers in food and beverage service establishments and in the tourism, hospitality, and thermal sector.

Regarding the news concerning night and holiday work for employees in food and beverage serving establishments and those in tourist, hospitality, and thermal structures, the circular letter clarifies that for services rendered between January 1st and June 30th, 2024, for workers in these sectors, a special supplementary treatment is recognized, which does not contribute to income formation, equal to 15% of gross wages, paid for night work and overtime performed on holidays. The supplementary treatment is due to recipients of dependent employment income in the private sector, provided that, in the tax year 2023, they received dependent employment income not exceeding €40,000 and, in the calculation of the aforementioned income limit, all dependent employment incomes (including those paid by multiple employers) earned by

the worker in the tax year 2023, including those derived from work activities other than those carried out in the tourism, hospitality, thermal, and food and beverage serving sectors.

Measures regarding the redemption of periods not covered by remuneration.

Lastly, regarding the redemption of periods not covered by remuneration, the circular explains that, experimentally for the biennium 2024-2025 only, individuals registered with one of the pension schemes administered by INPS, without contributory seniority as of December 31st, 1995, and not already entitled to a pension, may redeem, in whole or in part, periods prior to the effective date of the 2024 Budget Law, between the year of the first and the year of the last contribution credited in the aforementioned insurance schemes, not subject to contributory obligation, and not already covered by contributions, however paid and credited, to mandatory pension schemes, treating them as work periods. It is specified that the aforementioned periods can be redeemed for a maximum of five years, even non-continuous, preceding the effective date of the 2024 Budget Law.

Tax Litigation

Legislative decrees implementing the Enabling Law ("Legge Delega") for Tax Reform | Law No. 111 of Aug. 9, 2023

Within the Enabling Law (in Gazzetta Ufficiale No. 189 of Aug. 14, 2023), the government was delegated to adopt one or more legislative decrees to revise the tax system (see previous Tax Alert No. III of July 2023).

The main changes brought about by the legislative decrees issued on tax litigation, taxpayer rights and assessment are recalled below.

Tax Litigation | Legislative Decree No. 220 of Dec. 30, 2023

As part of the criteria for the revision of tax litigation, Art. 19 of the Delegated Law provides for the reduction of the timeframe of tax disputes, greater celerity in the precautionary phase, the enhancement of digital technologies in Tax Justice, and the provision of deflective litigation interventions at all levels of judgment.

Among the most significant innovations brought about by the legislative decree under review are:

- the repeal of the so called "Reclamo / mediazione" institute (deleted Art. 17-bis, Legislative Decree No. 546/1992), as of the date of entry into force of the decree, i.e., last January 4
- the extension of the judicial conciliation also to disputes pending in the Supreme Court, with the benefit of the reduction of penalties to 60 percent of the legal minimum, a provision also operating for judgments instituted as of last Jan. 4.

Taxpayer rights| Legislative Decree No. 219 of Dec. 30, 2023

Legislative Decree No. 219 of Dec. 30, 2023 implemented Article 4 of the Delegated Law, which, as part of the guiding principles and criteria for the revision of the Taxpayer's Rights Statute (L.212/2000), provided for the strengthening of certain principles (taxpayer's legitimate expectations, legal certainty, obligation to state reasons for tax assessments), the strengthening of self-defense, the rationalization of the discipline of the tax ruling, and the generalized application of preventive adversarial principle.

With reference to the innovations in the field of self-defense ("autotutela"):

- was introduced the so-called "compulsory" self-defense ("manifest illegitimacy of the tax deeds"), for which the Tax Authority proceeds to annul all or part of its deeds in specific cases (error of person, of calculation, on the identification of the tax, material error easily recognizable, error on the tax assumption, failure to take into account payments, lack of documentation subsequently remedied within the prescribed time); in cases of compulsory self-defense, provision was also made for the appealability of the refusal by the Tax Authority, whether express or tacit (in the latter case, the refusal is formed after 90 days from the submission of the application for self-protection)
- "Optional" self-defense ("illegitimacy or unfoundedness of the tax deeds") remains, for which the Tax Authority may proceed to total or partial cancellation even outside the cases provided for compulsory self-defense; however, in the case of optional self-defense, only the express refusal may be challenged towards a Tax Court.

The discipline of the tax ruling has also undergone a series of changes aimed at reducing the use of this institution by the taxpayers.

In essence, the categories of tax ruling are not changed.

Some changes on triggering prerequisites deserve attention, for which, for example:

- the so called "disapplicative ruling" of anti-avoidance rules becomes optional
- the so called "probatory ruling" may only be filed by those who adhere to collaborative compliance and those who file a ruling on new investments
- the "new residents ruling" under Art. 24bis TUIR is now in an autonomous provision with respect to the probatory ruling
- in order to proceed with the filing of a tax ruling is necessary the payment of a fee (to be defined within a further decree according to certain criteria, such as the type of taxpayer, the volume of business, the complexity of the ruling)
- for certain taxpayers (individuals, smaller taxpayers, partnerships) the prior use of databases made available by the Tax Authority is a condition for the ruling, otherwise precluded.

Another relevant news in the reform of the Statute of Taxpayers' Rights concerns the preventive adversarial principle (or "right to be heard" by the Tax Authorities), which, having been eliminated at the stage of the Tax Audit Report (with the repeal of the taxpayer's right to submit brief arguments against a Tax Audit Report within the 60-day period ex art. 12 L. 212/2000), is now provided for by the new article 6-bis of Law 212/2000 at the subsequent stage of the issuance of the notice of assessment. The institute applies to all acts that can be independently claimed before the Tax Courts, excluding the so called "atti automatizzati", prompt liquidation ("atti di pronta liquidazione") and formal control of the tax returns ("controllo formale" - to be identified by a further Decree to be issued by the Ministry of Economy and Finance), as well as substantiated cases of well-founded danger to collection.

In order to involve the taxpayer in advance with respect to the assessment phase in an effective and informed manner, the provision stipulates that all the tax assessments that can be independently challenged must be preceded by a so-called "schema di atto" (framework deed) that assigns to the taxpayer a period of not less than sixty days for any counterclaims or for requesting access to the file documents; before the expiration of this period, the formal notice of assessment cannot be issued.

With reference to the effective date of the new institute, the Law Decree No. 39 of March 29, 2024, provided that the provisions of Article 6-bis of Law No. 212/2000 do not apply to tax deeds issued before April 30, 2024.

Tax Assessments | Legislative Decree No. 13 of Feb. 12, 2024

Within the framework of Legislative Decree 13/2024, containing inter alia provisions on tax assessments, the Legislator introduces some new features on the so called "pre-court settlement procedure" ("accertamento con adesione") - instrument that has the purpose to avoid the tax litigation, with the rewarding effect of the reduction of penalties to one third of the legal minimum. The following changes apply to acts issued from April 30, 2024.

The new features on this instrument are related to (i) the extension of the settlement procedure also to the so called "acts of recovery of unduly offset tax credits"; (ii) the reintroduction of the settlement procedure also to the Tax Audit Reports, within 30 days of their delivery, with the reduction of penalties to one-sixth of the legal minimum, provided that the taxpayer fully accepts all the findings formulated in the Report (possibly conditioning the acceptance on the removal of manifest errors by the Tax Authorities).

The Legislative Decree under review makes changes aimed at coordinating the instrument of pre-court settlement with the features introduces on the preventive adversarial principle; in brief as follows.

With reference to the Tax Audit Report, the taxpayer's right to submit an instance requesting to start a pre-court settlement procedure remains (in addition to the already mentioned possibility of full settlement).

Within the subsequent phase of the issuance of the formal notice of assessment, the possibility to submit an instance for a pre-court settlement procedure both by the Tax Authorities and the taxpayer remains, although now regulated according to the presence or absence of the so called "schema di atto" (framework deed); in particular:

- in cases of acts not subject to the general adversarial principle and therefore not preceded by the above-mentioned "*schema di atto",* the Tax Authorities shall invite the taxpayer in order to activate the pre-court settlement procedure at the same time as the notification of the assessment.
- on the other hand, in cases of acts preceded by the *"schema di atto",* the activation of the pre-court settlement procedure always occurs at the initiative of the taxpayer within thirty days from the notification of the "*schema di atto"* or, but only alternatively, within fifteen days from the notification of the notice of assessment notified after the "schema di atto" (in the latter case, the suspension of the period for claiming the assessment towards the Tax Court is limited to thirty days, instead of ninety days).

Special Active Repentance Procedure | Law Decree no. 39 of Mar. 29, 2024

In the context of Decree-Law 39/2024 it has been (re)introduced the possibility of applying to the special active repentance procedure to regularize the infringements concerning validly submitted tax returns relating to the tax period running on 31 December 2021 and to previous fiscal years. To join, the taxpayer has to regularize the violations committed by 31 May 2024 by paying the sums due in a single solution or by paying an amount equal to five of the eight instalments planned and the three remaining instalments by 30 June 2024 (which scales to 1 July), 30 September 2024 and 20 December 2024.

As per the discipline of the special active repentance procedure originally introduced within the Budget Law 2023 (Law no. 197/2022), the taxpayer that regularize his tax position within this instrument may benefit of a penalties reduction to 1/18 of the minimum.

Transfer Pricing

Pillar One - Amount B

On February 19, 2024, the OECD Inclusive Framework on the BEPS (Base Erosion and Profit Shifting) project published the report on Amount B of Pillar One, one of the two pillars of fiscal measures defined at OECD level to address the challenges arising from the taxation of new business models. While Amount A of Pillar One focuses on the reallocation of profits among the jurisdictions where are operating the largest multinational groups, with global revenues exceeding 20 billion euro and consolidated profits before tax exceeding 10% of revenues, Amount B of Pillar One is potentially applicable to all multinational groups and aims to simplify and standardize the application of the arm's length principle to basic marketing and distribution activities (so-called "baseline" activities), identifying predefined levels of remuneration at arm's length, usable in place of the habitual economic analyses.

The simplified approach envisaged by Amount B applies to the following types of "qualified transactions":

- "buy-sell" marketing and distribution operations, in which the distributor purchases goods from another group entity for wholesale distribution to third-party customers; and
- agency and commissionaire operations in which the sales agent or commission agent contributes to the wholesale distribution of goods to third-party customers by one or more entities of the group.

The scope of qualified transactions therefore includes only those relating to the wholesale distribution of goods, intended as the sale of tangible goods to customers who are not final consumers. This category also includes distribution by companies that carry out both wholesale and retail distribution activities, provided that their retail net sales revenues do not exceed 20% of total net sales revenues.

The OECD report does not provide for an exhaustive list of the so-called "qualified transactions" falling within the scope of application of Amount B; however, it establishes a series of qualitative and quantitative criteria *("Scoping Criteria")* useful in determining whether the activities qualify as "baseline" marketing and distribution activities. In particular, the criteria envisaged are:

- qualitative: the transaction in question must present economically relevant characteristics, such that it can be reliably assessed using a "unilateral" method for determining transfer prices, where the distributor, sales agent or commission agent is the party of the transaction subject to analysis (so-called tested party), as it has a simpler functional and risk profile than the counterparty, and it is possible to use, albeit non-exclusively, the Transactional Net Margin Method - "TNMM";
- quantitative: the three-year weighted average of the ratio between operating costs and net sales (or intermediated) revenues of the tested party must fall within a range between 3% and an upper threshold between 20% and 30%, to be set by the States that will implement Amount B. Entities for which the indicator falls outside this range of values are excluded from the scope of application of the simplified approach.

Specific operations are excluded from the scope of application of Amount B, even if they satisfy the above criteria, where they refer to:

- distribution and marketing of intangible goods or services (including digital goods and services);
- distribution and marketing of commodities; and
- transactions in which the tested party also carries out activities other than distribution (such as, for example, manufacturing or research and development), unless the distribution activities can be adequately priced by properly segregating them from other activities.

The TNMM is indicated in the OECD report as the most suitable method for determining the transfer prices of qualified transactions pursuant to Amount B. However, where there are "internal" transactions comparable to those under examination, it is possible to rely on the Internal Comparable Uncontrolled Price - "CUP".

To provide valid indications for pricing qualified transactions falling within the scope of application of *Amount B, the OECD Inclusive Framework* has developed benchmark analyses aimed at identifying independent entities carrying out "baseline" marketing and distribution activities, leveraging on specifically selected search criteria and analytically reviewing potential comparables, so as to arrive at the definition of a global data set for the Return On Sales ("ROS") profit level indicator. The global set thus obtained was used to develop a price matrix, expressed in the form of operational profitability (in %) on sales, which approximates the arm's length returns for qualified transactions falling within the scope of application of Amount B.

Taxpayers that will adopt the simplified approach will therefore be able to determine the remuneration for qualified transactions by selecting the relevant segment of the price matrix, to be identified by crossing:

- the reference group of the industry to which it belongs, to be selected from three macro-groups, determined based on the relationships observed between specific industries and ROS levels obtained by the reference distributors for that industry, and
- the level of intensity of the OAS and OES factors, to be selected from five levels, deriving from the possible combinations of the Net Operating Asset ("OAS") indicator, expressed by the ratio between net operating assets and net sales revenues and the Operating Expenses ("OES") indicator, expressed by the ratio between operating costs and net sales revenues, calculated on the basis of the weighted average of the three fiscal years preceding the one for which the remuneration of baseline marketing and distribution operations has to be set.

Pricing matrix – operational profitability of sales in % (ROS) derived from the global dataset

Reference group	Group 1	Group 2	Group 3
Intensity levels of OAS e OES factors			
[A] OAS 45% or higher / any level of OES	3,50%	5,00%	5,50%
[[B] OAS 30% to 44.99% / any level of OES	3,00%	3,75%	4,50%
[C] OAS 15% to 29.99% / any level of OES	2,50%	3,00%	4,50%
[D] OAS less than 15% / OES 10% or greater	1,75%	2,00%	3,00%
[E] OAS less than 15% / OES less than 10%	1,50%	1,75%	2,25%

The ROS levels identified through the price matrix may be applied with a tolerance of +/- 0.5%. A cross-check mechanism based on operating costs (so-called operating expense cross-check) is also envisaged, which should allow any deviating results to be normalized by comparing the ROS identified on the matrix with a "cap-and-collar" range calculated for the profitability on operating costs. Where the level of operating profitability corresponding to the ROS identified on the matrix translates into a level of profitability on operating costs outside the reference cap-and-collar range, the ROS will be adjusted so that the level of profitability on operating costs is aligned with the cap or collar of the reference range, defined according to the intensity level of the OAS and OES factors.

The report constitutes an annex to chapter IV of the OECD Transfer Pricing Guidelines, therefore forming an integral part of the same. The adoption of the indications referred to in Amount B is optional and OECD Countries will be free to decide whether to apply Amount B on a binding or optional basis, starting from January 1st, 2025. The profitability parameters set within the context of Mutual Agreement Procedures and bilateral (or multi-lateral) Advance Pricing Agreements concluded before the entry into force of the simplified approach referred to in Amount B are not affected. The list of Countries that will apply the Amount B will be published on the OECD website.

Investment management | Published the guidelines for the application of the arm's length principle to investment management activities

With the publication, on February 28, 2024, of the Italian Revenue Agency's Measure n. 68665/2024, the implementation process of the rules on investment vehicles, so-called Investment Management Exemption regulations, is completed.

The Measure of February 28 implements the provisions set forth in the Decree of February 22, 2024 (so-called IME Decree), identifying the guidelines for the valorization, in compliance with the arm's length principle, set forth in Art. 110, par. 7 of the Consolidated Income Tax Code (TUIR), of investment-related services carried out in the territory of the State by resident entities belonging to multinational groups or by permanent establishments of non-resident entities.

The Measure distinguishes between two types of investment-related services, and namely:

- *"Investment management services"* and
- *"Services related and instrumental to investment management".*

The *"investment management services*" in the first category are, by way of example but not limited to, those involving the purchase, sale and negotiation of financial instruments, including derivatives, and loans, the administration of the assets collected (including legal services or expert opinions) and marketing activities (such as, for example, promotional offers, invitations addressed to prospects, etc.).

To estimate the remuneration for this type of services in accordance with the arm's length principle, the Measure establishes a "hierarchical" preference for the Comparable Uncontrolled Price ("CUP") method, to be used whenever it is reliably applicable. Alternatively, if the comparability conditions that are necessary for the CUP method to yield reliable results are not met, as in certain cases identified by the Measure, the most appropriate method would be the Profit Split. Specifically, the Profit Split is the method that should be applied in those cases where:

a) the parties to the transaction share the exposure to the same economically significant risks;

b) the parties to the transaction separately bear economically significant and closely related risks;

c) the CUP method is not applicable with the same degree of reliability.

Only where it is adequately documented that neither of the above methods can be reliably applied to value the intercompany remuneration of investment management services, the Measure refers, for the selection of the most suitable method, to the OECD Transfer Pricing Guidelines[1] and the Decree of the Minister of Economy and Finance of May 14, 2018[2], introducing, however, a relative presumption of non-applicability of financial indicators "*having costs as a basis of commensuration", unless it can be demonstrated that the provision of the services being valued "does not involve the assumption of economically significant risks".*

In this way, the Revenue Agency seems to give the Measure a higher rank than the OECD Guidelines, which are a hermeneutic source in the application of Art. 9 of treaties against double taxation[3] , or in any event attributes to it a character of specialty, as indicated in the motivations contained in the Measure itself, which identifies the most appropriate methods for the application of the arm's length principle to investment management services, providing for exceptions and provisions after having referred to the methods for determining transfer prices and the related applicability criteria described in the OECD Guidelines and in the Minister of Economy and Finance's Decree of May 14, 2018.

The method selection approach provided for by the OECD Guidelines, referred to in the Minister of Economy and Finance's Decree of May 14, 2018, are in fact considered valid, for investment management services, only in second instance, in cases where neither the CUP nor the Profit Split are reliable, as a matter of fact derogating from the best method rule which is usually applicable to the generality of intra-group transactions and which is intended at allowing taxpayers to select the method that is best suited to the transaction under analysis, thus re-establishing, to valorize investment management services, a sort of hierarchy of methods, even different from that previously provided by a domestic practice since long time obsolete.

Instead, with regard to the second type of investment-related services, i.e. the *"services connected and instrumental to investment management",* which the Measure traces back to the activities of promotion and development of investment management, such as investment consultancy, and those of an auxiliary nature with respect to investment management activities (such as study, research, analysis on economic and financial matters, the processing, transmission, communication of economic and financial data and information, the provision and management of computer or data processing services, the administration of real estate for functional use, services of an administrative/accounting nature), the methods and procedures for their selection set out in the OECD Guidelines and the Minister of the Economy and Finance's Decree of May 14, 2018, and therefore the best method rule, continue to apply.

However, in cases where the provision of services connected and instrumental to investment management implies the assumption of economically significant risks, the valorization under the arm's length principle of the remuneration associated with the transaction must be carried out following the same "hierarchy" of methods that the Measure prescribes for investment management services.

[1] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, July 2022.
[2] Decree of May 14, 2018, entitled "Guidelines for the application of the provisions set forth in article 110, paragraph 7, of the Consolidated Income Tax Code, approved by Presidential Decree n. 917 of December 22, 1986, concerning transfer pricing".
[3] Art. 9 of the OECD Model Convention, headed "Associated Enterprises", sets forth the arm's length principle.

Sect. 9 Income tax Code – Domestic transfer pricing | Supreme Court n. 5859/2024

The judgement n. 5859/2024 concerns a company tax resident in Italy (hereinafter "Gamma") transferring goods to another Italian company, belonging to the same group, enjoying a tax relief for income tax purposes (hereinafter "Beta").

The Italian Tax Authorities challenged to Gamma, with regard to the determination of the consideration of the said transfer, the application of a 4% mark-up, in place of 10%, considered unfit to remunerate the costs, so assuming an increase of the income, in the hands of Beta, subject to the above-mentioned tax relief.

The Supreme judges, by the sentence n. 17995/2013, accepted the appeal of the Agency and postponed the case to the Regional Court setting down the principle according to which the considerations related to domestic intercompany transactions must, in view of an alleged "general anti-avoidance rule" sets forth by Sect. 9 of the ITC, comply with economic criteria, so that the congruity or not of the said considerations must be assessed in the light of market value's criterion.

The sentence of the Regional Tax Court – which, on the basis of the principle set down by the Supreme Court n. 17995/2013, reckoned as uneconomical the mark-up of 4% applied by Gamma – was challenged by the latter company in front of the Supreme Court, which, with the sentence concerned, rejected the appeal providing for the following reasons.

The judges firstly bolstered not applicable to the case at issue Sect. 110, par. 7, of the ITC, in that such a provision, following to the authentic interpretation given by Sect. 5, par. 2, of the Legislative Decree n. 147/2015, only concerns the intercompany transactions with foreign parties.

That stated, the Supreme judges additionally argued that the "abusing arbitrage" related to the domestic intercompany considerations can be tackled, during the tax assessment, by art. 9 of the ITC. On the basis of this provision, the Italian Tax Authorities, if on one hand must prove that the amount of the consideration agreed by the parties is lower than the market value of the goods or services transferred, comparing the same to the one agreed under free market conditions between independent parties, on the other hand is not obliged to demonstrate the actual tax advantage enjoyed by the taxpayer. The latter, for its part, is entitled to demonstrate that the transaction has been carried out at market value.

The Supreme Court argued, in other terms, the need to evaluate, in case of domestic transfer pricing, the economy or not of the behavior of the taxpayer with the consequence that, should the latter is not able to demonstrate that the difference between the consideration agreed by the parties and the market value of the goods transferred is attributable to an intercompany interest, such a difference generally represents an anomaly which, unless proved otherwise, justifies the assessment by the Tax Authorities.

Government Incentives

Transition 5.0 Tax Credit

Article 38 of decree-law March 2, 2024, no. 19 establishes the Transition 5.0 Plan for the period 2024-2025, with a budget of 6.3 billion euros from REPowerEU resources.

The Plan provides a tax credit to companies making new investments in Italy for innovation projects that reduce energy consumption. Eligible investments include interconnected tangible or intangible assets listed in annexes A and B of law no. 232/2016 (Industry 4.0 tax credit), provided they contribute to an overall reduction in energy consumption of the establishment. Among the assets listed in annex B, if specifically included in the innovation project, are software, systems, and platforms for monitoring and optimizing energy consumption, as well as business management software, if purchased together.

For this purpose, the following investments are also eligible:

a) new tangible assets for self-production of energy from renewable sources for self-consumption (excluding biomass), including facilities for storing the produced energy;
b) for personnel training in relevant technological skills for the digital and energy transition of production processes (up to 10% of the investment in assets mentioned above, with a maximum limit of 300,000 euros), provided that training activities are delivered by specific external entities identified by ministerial decree.

The reduction in consumption, calculated on an annual basis, is based on energy consumption recorded in the year preceding the start of investments, net of variations in production volumes and external conditions affecting energy consumption. For newly established companies, energy savings achieved are calculated compared to average annual energy consumption referring to an alternative scenario identified by future ministerial decree.

The tax credit is granted with different intensity depending on the reduction in energy consumption at the production structure level or, alternatively, at the level of processes affected by the investment and the total value of investments, as illustrated in the table below.

Investment value	Energy consumption reduction not less than 3%* or 5%**	Energy consumption reduction greater than 6%* or 10%**	Energy consumption reduction exceeding 10%* or 15%**
Up to 2.5 Mln EUR	35%	40%	45%
From 2.5 to 10 Mln EUR	15%	20%	25%
From 10 to 50 Mln EUR	5%	10%	15%
**Energy consumption reduction of the production structure* ***Energy consumption reduction of the processes affected by the investment*			

To claim the benefit, companies submit a prior communication to the Energy Services Authority (GSE), which serves as a reservation.

The benefit is subject to the submission of appropriate certifications issued by an independent assessor, which, regarding the eligibility of the investment project and its completion, certify:

- ex ante, the achievable reduction in energy consumption through investments in new tangible or intangible interconnected instrumental assets, as previously mentioned (Article 38, paragraph 4, of Decree-Law 19/2024);
- ex post, the actual implementation of investments in accordance with what is foreseen by the ex ante certification.

The beneficiary company is also required to obtain a specific certification issued by the entity responsible for the statutory audit (for companies not legally obliged to undergo a statutory audit, the certification is issued by a statutory auditor or a statutory audit firm).

Invoices, transport documents, and other documents related to the acquisition of facilitated assets must contain explicit reference to the provisions of Article 38 of decree-law March 2, 2024, no. 19.

The tax credit does not contribute to the formation of income or the taxable base of the regional tax on productive activities. Furthermore, it cannot be transferred or assigned, even within the tax consolidation.

The tax credit cannot be cumulated, concerning the same eligible costs, with the tax credit for investments in new tangible instrumental assets “Industry 4.0”, nor with the tax credit for investments in the single ZES. It is, however, cumulative with other incentives covering the same costs, provided that such cumulation, taking into account also the non-contribution to the formation of income and the taxable base of the regional tax on productive activities as mentioned above, does not lead to exceeding the incurred cost.

The tax credit is correspondingly reduced by excluding from the original calculation base the related cost if, within the observation period of 5 subsequent years from the completion of the investment, there is: transfer to third parties, relocation to another establishment, failure to exercise the buyback, allocation to purposes unrelated to business activity, even partially involving the amount of the investment. Any excess credit used must be refunded, without penalties and interests.

Subsequent to a decree by the Minister for Enterprises and Made in Italy, adopted in agreement with the Minister of Economy and Finance, having heard the Minister for the Environment and Energy Safety, the implementing modalities of the incentive will be established.

New “De Minimis” Regulations

On December 13th, 2023, the European Commission has adopted two regulations amending the general rules for small amounts of aid (“general” De Minimis Regulation no. 2023/2831) and for small amounts of aid for Services of General Economic interest, such as public transport and healthcare (SGEI De Minimis Regulation no. 2023/2832). The regulations entered into force on January 1st, 2024, and will apply until December 31st, 2023.

The main amendments to the previous versions of De Minimis regulations.

“General” De Minimis:

- The increase in the ceiling per single enterprise from € 200,000 to € 300,000 over three years;
- The introduction of safe harbours for financial intermediaries to further facilitate aid in the form of loans and guarantees.

SGEI De Minimis:

- The increase of the ceiling per single enterprise from € 500,000 to € 750,000 over three years.

Moreover, for both regulations the introduction of an obligation for Member States to register De Minimis aid in a central register set at national or EU level as of January 1st, 2026.

With a FAQ published on January 25th, 2024, on the Italian Register of State Aid, it has been clarified that the three years period of observation to count the ceiling of aids is made with reference to a period of 3 calendar years from the date the aid

is granted. Thus, it is no longer applicable the previous notion for which the period of three years was counted as the fiscal year concerning the aid is granted and the previous two fiscal years.

Transfer of economic activities to Italy "reshoring"

The art. 6 del Legislative Decree dated December 27, 2023, no. 209 provides that the incomes from economic activities of enterprises and from the exercise of arts and professions exercised in an associated form, carried out in a foreign country not belonging to the European Union or the European Economic Area, transferred to the territory of the State, does not contribute to forming taxable income for income tax and IRAP purposes for 50% of its amount in the fiscal year in progress at the time when the transfer takes place and in the five subsequent fiscal years.

Economic activities, carried out in the territory of the State in the 24 months prior to their transfer, are not covered by the relief.

For proper application of the relief, the taxpayer is required to maintain separate accounting records suitable for verification of the correct determination of the income subject to the relief. The relief is terminated if in the 5 fiscal years (10 for Large enterprises), following the expiration of the relief scheme the beneficiary transfers out of the territory of the State, even partially, the assets subject to the previous transfer. In this case, the Tax Administration recovers with interest, the taxes not paid during the relief regime from which the taxpayer has lapsed.

The applicability of this relief is subject to authorization by the European Commission, granted under Article 108(3) TFEU. The authorization has not yet been granted.

Hyper depreciation and "late" interconnection of Leased Assets | Revenue Agency Resolution no. 34/2023

With reference to hyper depreciation, in continuity with previous clarifications, in its Answer No. 34 of Feb. 8, 2024, the Italian Revenue Agency confirmed that if interconnection is made in a fiscal year subsequent to the fiscal year in which the asset is put into operation, the deduction of hyper depreciation can only begin from that later fiscal year. However, the late interconnection of the asset is permissible as long as the technical characteristics required by the 4.0 framework are already present in the asset prior to its first use (or put into operation) and as long as the fulfillment of all technological and interconnection characteristics persists for the entire period of time in which the beneficiary entity benefits from the relief under consideration. Moreover, the circumstance that interconnection can also take place in a later fiscal year cannot extend to include "any" fiscal year; this is because late interconnection must depend on objective conditions that must be documented and demonstrated by the enterprise and not on discretionary and instrumental behavior on the part of the taxpayer.

FSI

Investment management Exemption | Implementation Decree and Transfer Pricing Guidelines published.

By way of introduction, the 2023 Budget Law amended article no. 162 of Italian Tax Code (hereinafter ITC) by adding paragraphs 7-ter, 7-quater and 7-quinquies amending the definition of permanent establishment ("PE") for foreign investment vehicles – so-called Investment Management Exemption (IME) regime. In this respect, the Italian Minister of Economic and Finance Decree of 22 February 2024 ("Ministerial Decree") has been published in the Official Gazette no. 53/2024 and it is aimed at implementing the IME regime.

According to article 162(7-ter), provided that the conditions set out in subsequent paragraph 7-quarter are met, the asset manager or the advisory company – either Italian resident or not, including their Italian PE – habitually concluding in the name of or on behalf of a foreign investment vehicle (or its direct and indirect subsidiaries) contract for purchasing, selling or negotiating (or contributes to the purchase, sale or negotiation) of financial instruments, participations and credits are regarded as an independent agent.

Paragraph 7-quarter of article 162, ITC set forth the conditions to qualify the asset manager (or the advisory company) as an independent agent of the foreign investment vehicle.

To this aim, the Ministerial Decree implements the following independence requirements:

a) the asset manager (or advisory company) acting in Italy in the name of or on behalf of the foreign investing vehicle shall not hold

- directorship roles in the vehicle's management bodies (or in its direct and indirect subsidiaries);
- an interest in the vehicle (or in its direct and indirect subsidiaries) granting more than 25% of the related profit;

b) the remuneration received by the asset manager or advisory company for the services rendered to the foreign vehicle, within the same group, shall be supported by transfer pricing documentation prepared according to the guidelines issued by Italian Revenue Agency.

In addition, the Ministerial Decree establishes that certain collective investment schemes (CIVs) and entities are regarded as "independent", such as:

1. CIVs established in the European Union or European Economic Area and compliant with UCITS IV or AIFM Directive and
2. CIVs and entities established in a white-list jurisdiction under Legislative Decree no. 239/1996, meeting certain conditions in terms of plurality of – and independence from – investors and subject to prudential supervision requirements.

Finally, it is noted that in case the conditions set forth by IME regime are not met, a case-by-case analysis aimed at excluding any Italian PE of the foreign investment vehicle may be required.

Substitute tax on financial capital gains | Revenue Agency Ruling No. 28/2024 and No. 55/2024

With Rulings No. 28 and 55 of 2024, the Italian Revenue Agency has clarified some aspects related to the computation of advance payment and the refund of overpayment of substitute tax on financial capital gains due from financial intermediaries within the discretionary portfolio management regime under Article 6 of Legislative Decree No. 461/1997.

In particular, Article 2, paragraph 5, of Law-Decree No. 133/2013 requires financial intermediaries to pay by 16th December an advance payment equal to 100% of the substitute tax due for the first eleven months of the same year. Such an advance payment may be deducted from the substitute tax due starting from 1st January of the following year. In other words, since the substitute tax is due by the 16th day of the second month following the month in which it is applied, the amount to be paid by 16th December is equal to the sum of the substitute tax on financial capital gains due for the period from November to September, gross of any offset made during the same period.

In Ruling No. 55 of 2024, the Revenue Agency confirms that financial intermediaries may not apply the so-called 'forecast method' for the computation of substitute tax advance payment due, that is based on the financial capital gains expected to be realized by their customers in the relevant fiscal year.

Furthermore, the Tax Authorities clarified that, where a credit results in case of advance payments higher than the substitute tax due, such a credit can be used only to offset future payments relating to the same substitute tax, excluding the possibility to offset that credit against other tax liabilities.

In Ruling No. 28 of 2nd February 2024, Italian Revenue Agency clarifies that it is possible to proceed with a refund request in relation to a credit – deriving from the substitute tax advance payments – transferred to a bank within a transfer of going concern, considering that the transferee may not offset such a credit since it does not provide to their costumers custody and administration services (entailing the payment of the substitute tax). In this respect, the Revenue Agency confirms the possibility to submit to the competent Revenue Agency Office a specific request for refund, provided that the credit results from the withholding agent tax return.

Extraordinary tax on extra profits realized by banks | Revenue Agency Circular No. 4/2024

With Circular No. 4 of February 23, 2024, the Italian Revenue Agency provides certain clarifications regarding the so-called "extraordinary tax" on banks' excess profits, introduced by Article 26 of Legislative Decree No. 104/2023, converted with amendments by Law No. 136 of October 9, 2023.

As a preliminary remark, it should be noted that pursuant to the aforementioned Article 26, the extraordinary tax is due by banks as defined by Article 1 of Legislative Decree No. 385/1993 (the Consolidated Banking Act), determined as the 40% of the increase in the interest margin (i.e. item 30 of the P&L) as of December 31st 2023, compared to the interest margin as of December 31st 2021 – in case the fiscal year coincides with the calendar year – for the increase exceeding the 10% threshold. In this respect, Circular No. 4/E confirms that the extraordinary tax applies to all banks listed in the Register established by Article 13 of the Consolidated Banking Act, including Italian permanent establishments of non-resident banks authorized to carry out banking activities in Italy. In addition, it is clarified that in case of a negative interest margin resulting in the year prior to the fiscal year running on January 1, 2022 (i.e. FY 2021), for the purpose of the extraordinary tax computation the FY21 interest margin is assumed equal to zero.

Circular No. 4/E also details the methods for determining the taxable base and calculating the tax due in case of newly established banks that have started banking activities within the period set forth by mentioned article 26, namely FYs 2021 – 2023 for those entities whose financial year coincides with the calendar year.

The amount of the extraordinary tax cannot exceed 0.26% of the so-called "total risk exposure amount on an individual basis" determined according to Article 92 of Regulation (EU) No. 575/2013, as resulting at the closing date of the year prior

to the year running on January 1, 2023 (i.e. FY 2022). Although there is no specific requirement to report the value of "total exposure risk amount" on an individual basis, banks subject to the extraordinary tax are required to include such information in the 2024 Corporate Income Tax Return related to FY 2023.

The extraordinary tax shall be paid within the sixth month following the closing of the year prior to the year running on January 1, 2024 (i.e. FY 2023). Italian Tax Authorities clarifies that the extraordinary tax shall be paid by July 31, 2024 for those entities approving the financial statements after the fourth month of the closing of financial year.

Alternatively, instead of paying such an extraordinary tax, it is allowed to book in the 2023 financial statement a "non-distributable reserve" – classified under the Common Equity Tier 1 as per the EU Regulation No. 575/2013 – equal to 2.5 of the amount of extraordinary tax due. In this respect, the taxpayer shall provide specific evidence of such a reserve and related movements in the explanatory note to the financial statements. In addition, it is not possible either to appoint as "non-distributable" reserves of future profits, or to partially pay the extraordinary tax and book a "non-distributable reserve" for the remaining part.

Contacts

Bari
Corso Vittorio Emanuele II, 60
Tel. 080 8680801
Fax 080 8680802

Bologna
Via A. Testoni, 3
Tel. +39 051 65821
Fax. +39 051 228976

Catania
Viale XX Settembre 70
Tel. +39 095 6147211
Fax. +39 095 6147212

Firenze
Via Pier Capponi, 24.
Tel. +39 055 2671211
Fax. +39 055 292251

Genova
Piazza della Vittoria, 15/34
Tel. +39 010 5317811
Fax. +39 010 585319

Milano
Via Tortona, 25
Tel. +39 02 83324111
Fax. +39 02 83324112

Napoli
Via Riviera di Chiaia 180
Tel. +39 081 2488200
Fax. +39 081 2488201

Padova
Via N. Tommaseo, 78/C
Tel. +39 049 7927977
Fax. +39 049 7927988

Parma
Via Paradigna, 38
Tel. 051 65821
Fax 051 228976

Roma
Via Vittorio Veneto, 89
Tel. +39 06 489901
Fax. +39 06 4740131

Torino
Galleria San Federico, 54
Tel. +39 011 55421
Fax. +39 011 5620395

Treviso
Viale Fratelli Bandiera, 3
Tel. 049 7927977
Fax 049 7927988

Varese
P.zza Montegrappa, 12
Tel. 0332 1858342
Fax 02 83324112

Vicenza
Corso Fogazzaro, 92
36100 - Vicenza

This edition has been edited by Francesca Muserra together with:
Think Tank STS Deloitte and Simone Arecco, Andrea Ferrario, Veronica Maestroni, Giulia Persico, Barbara Rossi, Stefano Schiavello, Manuele Tine', Ranieri Villa.

Deloitte.