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DIRECT TAXES

TAX CREDITS FOR ENERGY-INTENSIVE BUSINESSES AND EXTRAORDINARY CONTRIBUTION

The Italian tax authority (Agenzia delle Entrate) provides information on the tax credits for energy-intensive businesses as well as on the extraordinary contribution to fight the price increase of the ancillary costs (so-called "caro bollette") ("contribution on excess profit").

With regard to the extraordinary contribution against the price increase of the ancillary costs ("contribution on excess profit"), the Italian tax authority declares that transactions not subject to VAT for lack of the territorial requirement pursuant to sections 7 to 7-septies DPR 633/1972 do not contribute to the determination of the taxable amount only if (and to the corresponding extent) the related purchases are also not subject to VAT and can therefore not be accounted for in the periodic VAT settlement communication (LIPE) due to the lack of the territorial requirement. Due to interpretive issues regarding the aforementioned point, no penalties are to be paid regarding the amounts, which were not paid within the due date of 30 June 2022, as long as the supplementary payment (including the respective interests) is executed on time (Italian tax authority, newsletter no. 25, 11 July 2022).

FRINGE BENEFIT

Goods and services provided by the employer for the employees during the tax year 2022 are excluded from taxation to the following amounts:

- euro 200 for one or more fuel vouchers, and
- euro 258.23 for other goods and services.

Therefore, if the value of the fuel vouchers is of euro 250 and the value of the other benefits amounts to euro 200, the total amount of euro 450 does not add to taxable income from employment, as the excess of euro 50 of the fuel vouchers balances with the amount for the other benefits, which has not been fully used (Italian tax authority, newsletter no. 27, 14 July 2022).

SIMPLIFICATIONS RELATED TO IRAP

The Italian tax authority provides information on the determination of the net production value for the purposes of Italian regional tax on productive activities (IRAP) and, in particular, in relation to the deductibility of staff costs (Italian tax authority, resolution no. 40, 15 July 2022).

CONTROLLED FOREIGN COMPANIES

Under constant control of the Italian tax resident, the disapplication of the CFC scheme by the foreign company may be effected:

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- upon demonstration of the exemption (or after a substantive economic activity has been carried out), or
- as soon as the Effective Tax Rate Test and/or the Passive Income Test are no longer satisfied (Italian tax authority, newsletter no. 28, 15 July 2022).

CARRY-OVER OF TAX POSITIONS IN CASE OF DEMERGER

For the carry-over of the tax positions (losses, interest expenses, NID excess) of the demerged company to the already existing beneficiary, the vitality test must be carried out as follows.

In case of transfer of a branch/line of the company to the beneficiary, the vitality test is calculated according to the parameters expressly provided for in Articles 172 and 173 of the Italian Tax Code (TUIR), taking into account the accounting data relating to the demerged complex.

In case of transfer of goods, which are not part of a company branch, to the beneficiary, alternative criteria (such as the presence of surplus values in the transferred goods) must be identified, given the objective lack of accounting data relating to the transferred assets. Those criteria must represent the vitality of the demerged complex as well as its capacity to reabsorb the tax positions, which were transferred to the beneficiary (Italian tax authority, newsletter no. 31, 1 August 2022).

TAX DOMICILE

Proof of tax domicile abroad is provided if one's own and one's family's domicile outside the national territory is proven. It is not relevant that the activity is also carried out in Italy (Supreme Court ruling no. 18009, 6 June 2022).

VAT

PENALTY FOR NON-EXISTING TRANSACTIONS

With regard to reverse charge, the fixed penalty pursuant to Article 6, paragraph 9bis3 of Legislative Decree 471/1997 is only applicable in the case of transactions, which are "exempt from VAT, not taxable, or not subject to VAT", even if non-existing, whereas it is not applicable in the case of non-existing "taxable" transactions (Supreme Court United Sections ruling no. 22727, 20 July 2022).

PENALTY FOR OMITTED SELF-BILLING

The time limit for the fulfilment of the invoicing-obligation for services is represented by the payment of the consideration. Therefore, the lack of proof of payment of the consideration excludes the penalty pursuant to Article 6, paragraph 8 of Legislative Decree 471/1997 for the purchaser's omitted self-billing (Supreme Court ruling no. 16479, 23 May 2022).

BUILDING UNDER CONSTRUCTION

For VAT purposes, a property on which works are interrupted while under construction before reaching building register category F3 (necessary for it to be granted the status of a building), it does not constitute a "(unfinished) building still to be completed", but a building land (Italian tax authority, answer to ruling application no. 365, 6 July 2022).

INTERNATIONAL TRANSPORT SERVICES

Transport services relating to international transactions are included in the tax exemption scheme, provided that they are carried out for the following subjects: (i) exporter, (ii) holder of the transit procedure, (iii) importer, (iv) recipient of the goods, (v) provider of the services related to the transport of persons carried out partly within State and foreign territory under a single contract, in connection with the transport of export goods, transit goods, or good

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of temporary importation, as well as in connection with the transport of import goods, provided that the transport service fees are included in the taxable amount, as well as by the supplier of the services in connection with customs transactions.

International transport services, which are entrusted to a third carrier (so-called sub-licensing), in whole or in part, by a principal carrier, who was himself entrusted with the transport of the goods by the exporter, the importer, or the recipient of said goods, are subject to VAT (Italian tax authority, answer to ruling application no. 392, 26 July 2022).

INDIRECT TAXES

DONATION FOR THE PURCHASE OF A PROPERTY

A donation aimed at the purchase of a property by the recipient, formalised by public deed, which is different from the deed of sale, constitutes a "direct" donation and therefore, the scheme of exemption from the registration tax provided for "indirect" donations pursuant to Article 1, paragraph 4-bis of Legislative Decree 346/1990 does not apply (Italian tax authority, answer to ruling application no. 366, 6 July 2022).

DEMERGER OF CIVIL COMPANY

The demerger of a civil company is subject to fixed registration tax pursuant to Article 4 of the Tariffs, p. I of the Italian Registration Tax Code (TUR). According to this rule, the requirement of the exclusive or main purpose being of commercial or agricultural nature does not apply to companies, but only to entities other than companies (Supreme Court United Sections ruling no. 23051, 25 July 2022).

FAMILY AGREEMENT

In case of transfer of the company and of the company's shares, the exemption pursuant to Article 3, paragraph 4-ter of Legislative Decree 346/1990 applies to the family agreement only with regard to the beneficiary descendant, not to the payments made by him in favour of the other beneficiaries (Supreme Court ruling no. 19561, 15 June 2022).

REPORTING OF CROSS-BORDER TRANSACTIONS

In the following, the amendments introduced by decree-law 73/2022 (so-called "Simplification Decree") with regard to the reporting of cross-border transactions are shown.

Purchases of goods and services, which are not territorially relevant for VAT purposes in Italy pursuant to Articles 7 - 7-octies of Presidential Decree No. 633/1972 are exempt from the reporting obligation if the amount does not exceed €5,000 per single transaction (the exemption is already provided for transactions documented by a customs receipt, or an e-invoice submitted via SDI-platform).

With regard to the field of application, all transactions with foreign subjects, including private ones, must be reported if the transaction fee is certified by an invoice or a similar document.

The reporting includes the supply of goods and services to and from subjects not based in the territory of the State, regardless of whether the transaction is relevant for tax purposes in Italy or not.

The following should be noted with regard to the new regulations for filing in the XML-files.

As of 1 July 2022, the new transmission-method for data regarding cross-border transactions provides that the XML-file corresponding to the specifications of version 1.7, published with the Italian tax authority's provision no. 374343, 23 December 2021, is transmitted to the SDI-platform for each transaction. The SDI-platform will carry out the usual formal checks on said files pursuant to Article

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21 of Presidential Decree 633/1972.

With regard to the mandatory fields "nature, quality and quantity of the goods and services that are the subject of the transaction", the data in the document issued outside of the SDI-platform (analogue copy of the invoice issued to the foreign customer and invoice received from the foreign supplier) must match the data in the XML-file which is to be transmitted to the SDI-platform. However, a perfect match of information is not required. In case the XML-file which is to be transmitted to the SDI-platform is generated with a different software than the one used to generate the e-invoices issued to Italian customers, the field relating to the description may be filled in with "goods" or "services" or, if both goods and services are mentioned in the invoice, "goods and services", also referring to the description contained in the invoice issued. The same modalities apply to purchases.

The electronic submission of data relating to transactions from subjects not established in the territory of the State must be carried out as follows:

- within the deadlines for issuing invoices or documents certifying the fees;
- by the fifteenth day of the month following the month in which the document certifying the transaction or the execution of the transaction.

Please note: In the case of an intra-Community supply (for which the invoice must be issued by the fifteenth day of the month following the month in which the transaction was carried out) the data must be transmitted by the fifteenth day of the month following the month in which the transaction was carried out, even if the invoice is issued on a different date, within the limits pursuant to the Law (e.g., a supply carried out on 1 October 2022, invoice issued on 31 October and the data is transmitted on 10 November 2022).

In case the document proving the purchase is missing or does not arrive in due time, the data-transmission regarding purchases must in any case be completed by the fifteenth day of the month following the execution of the

transaction. In the case of "general" services it is to be determined based on criteria set out in Article 6, paragraph 6 of Presidential Decree 633/1972 (completion of the service or, in case of a periodic or continuous service, the date on which the fee is due).

The transmission of data with the relevant document types (TD17, TD18, TD19) enables the fulfilment of the obligations under Article 17, paragraph 2 of the Italian VAT Decree. Therefore, it is possible to fulfil the obligation of integration/self-billing by transmitting data via XML-files using the document types TD17, TD18, and TD19.

Therefore, there is no obligation to integration/self-billing via the data transmission procedure through XML-files using the document types TD17, TD18, and TD19 (this kind of integration/self-billing could also be done in analogue form).

Generally, the late transmission of data regarding purchases does not result in late VAT-payment through integration/self-billing. (However, the applicable penalties must be valued case by case with regard to the nature of the actual breach. A different conclusion would be possible if both the obligation of integration/self-billing and the reporting obligation were fulfilled by a single performance).

The following should be noted with regard to data storage purposes.

The invoice issued as XML-file and transmitted via SDI-platform (by using a recipient code transmitted by the customer with a purchaser's country code other than IT), must be stored electronically pursuant to Article 39, paragraph 3 of Presidential Decree 633/72.

If, on the other hand, the document is issued to the non-resident counterparty using the traditional code "XXXXXX" and a country code other than IT, the file containing the invoice data is not transmitted to the purchaser via the SDI-platform.

As is is not an e-invoice, the document must be stored (also electronically).

The integration via the SDI-platform of invoices/documents received from foreign subjects through another channel,

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does not exclude the obligation to properly store them (in analogue or electronic form) (Italian tax authority, newsletter no. 26, 13 July 2022).

Kind regards

HAGER & PARTNERS