



## NEWSLETTER N. 12 - 2022

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### DIRECT TAXES

#### DEDUCTION OF THE HIGHER REVALUED VALUE OF TRADEMARKS AND GOODWILL

The 2022 Italian Budget Law set forth that the revalued higher value of intangible assets, whose depreciation charges are deductible for no more than one eighteenth, must be deducted for no more than one fiftieth for corporate and regional tax on productive activities purposes. They may continue to be deducted for one eighteenth, provided that the substitute tax provided for under section 176 (2-ter) of the Italian Tax Code (TUIR), is paid.

To this end the Italian tax authority clarified that such provision applies to trademarks, goodwill and intangible assets with an indefinite useful life, that are allowed to be deducted at the same conditions and within the same annual thresholds, as set forth for trademarks and goodwill, irrespective of their entry into the profit and loss account, whereas it does not apply to other intangible assets, whose depreciation charges are deductible for no more than 50 percent, as provided for under section 103 of the Italian Tax Code (Italian tax authority, answer to request for advance ruling no. 46 of 2 August 2022).

#### SHORTER TAX ASSESSMENT DEADLINES

The shortening of the tax assessment deadlines by two

years, as provided for under section 3 of the Italian legislative decree no. 127/2015 applies, provided that all payments of amounts exceeding EUR 500 are received and made by using traceable means of payment. Any contingent receipt of paper invoices is irrelevant for the shortening of tax assessment deadlines (Italian tax authority, answer to request for advance ruling no. 404 of 2 August 2022).

#### EMPLOYEE TRAVELS

Kilometre allowance granted to employees for travels outside the municipality in which the place of work is located for travel expenses incurred by using of their own car are not taxable if they are based on ACI (Automobil Club d'Italia) tables.

However, if such kilometre allowance is instead based on the cost of public transport (flight tickets, bus ticket etc.), it is:

- not taxable if its amount is equal to or lower than the one contained in the ACI tables;
- taxable if its amount exceeds the one contained in the ACI tables (Italian tax authority, answer to request for advance ruling no. 405 of 2 August 2022).

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### CFC AND ENTRY TAX

The Italian tax authority provides clarification on the interactions between the CFC scheme and the rules on the so-called entry-tax under section 166-bis of the Italian Tax Code in the event of a foreign company affected by an entry merger.

If the foreign company qualified as CFC in previous business years, the entering assets and liabilities of the CFC company must:

a) take over the values used for CFC rule purposes in general at the end of the last business year under the taxation by transparency scheme;

or

b) the values established for entry-tax purposes, provided that the exemption criteria under section 167 (5) of the Italian Tax Code (i. e. the foreign company carries out an actual business activity using personnel, equipment, assets and facilities) or the requirements for CFC purposes are not met in the last business year relevant for CFC purposes.

In the event of a merger occurred in the second half-year, i. e. once most of the tax period has elapsed, the requirements under b) above must be reassessed in the same period in which the merger and the entry in Italy occur (Italian tax authority, answer to request for advance ruling no. 408 of 4 August 2022).

### TRANSITION TO NEW PATENT BOX SCHEME

If the option for the reverse charge scheme (autoliquidazione OD) under section 4 of the Italian law-decree 34/2019 is exercised in the SC 2021 (year 2020) form, it is not allowed to adhere to the incentive scheme pursuant to section 6 of the Italian law-decree 146/2021 as an alternative to the scheme opted for. In such event the old patent box reverse charge scheme (autoliquidazione OD) may be used until its natural expiration after five years, i. e. until 2024, with no obligation to exercise the option year after year.

However, as to new intangible assets acquired as of 2021, the option for the new patent box scheme only may be exercised - provided that the requirements set forth under the new rules are met (Italian tax authority, answer to request for advance ruling no. 413 of 4 August 2022).

### TRADE NATURE FOR PARTICIPATION EXEMPTION PURPOSES

Activities aimed to assess the viability and the profitability of an investment made through a business branch lease are not deemed "preparatory" for the set-up of the business. Hence, if the business branch leased can be turned back into business quickly, the failure to exercise the trade activity results in the loss of the prerequisite of the trade nature for participation exemption purposes (Italian tax authority, answer to request for advance ruling no. 418 of 5 August 2022).

### EXTRAORDINARY CONTRIBUTION ON EXCESS PROFITS

For the calculation of the tax base of the extraordinary contribution on excess profits pursuant to section 37 of the Italian law-decree 21/2022 the possibility to modify data on the periodical VAT payments (in accordance with the principle of tax symmetry called upon by circular letters 22/E and 25/E) requires the taxpayer to prove the correlation between purchases not subject to VAT and sales not subject to VAT, based on objective and noticeable criteria (Italian tax authorities, answer to request for advance ruling no. 420 of 12 August 2022).

### INVESTMENT GRANTS

The contribution received pursuant to law for the release of digital terrestrial frequencies (vis-à-vis the compulsory termination of the right of use of the frequencies for the transmission of programmes) causes unexpected profits pursuant to section 88 (3b) of the Italian Tax Code, with the consequence that said sums add to taxable income (i) in

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the business year in which they are cashed in (ii) or on a straight-line basis in the business year in which they are cashed in and in the subsequent (no more than four) business years (Italian tax authority, answer to request for advance ruling no. 427 of 12 August 2022).

### VAT

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#### GRADUATED LEASE PAYMENTS

The agreement of so-called "graduated" lease payments, i. e. lease payment that increase or decrease based on criteria pre-established by the parties - such as turnover or the execution by the tenant of works required to make the property suitable for a trade activity to be carried out therein - qualifies as an exchange. Hence:

- the owner of the property must issue an invoice stating the entire amount of the monthly lease payment originally agreed upon (gross lease payment), including VAT, to the tenant;
- no later than on the day of receipt of the invoice as above, the tenant must invoice to the property owner the benefit received by the latter under the form of restructuring works carried out by applying the VAT scheme eligible for the type of works carried out (Italian tax authority, answer to request for advance ruling no. 424 of 12 August 2022).

#### SECONDARY INFRASTRUCTURE WORKS

The performance of services resulting from a contract for work on the establishment of a new municipal filing system is subject to VAT at the reduced rate of 10 percent, pursuant to no. 127-quinquies and no. 127-septies of Table A, Part III, enclosed to the above-mentioned DPR no. 633/1972 (Italian tax authorities, answer to request for advance ruling no. 402 of 2 August 2022).

#### TERRITORIALITY RULES FOR ONLINE TRAINING COURSES

Online training courses for customers:

- which are VATable persons (B2B) are subject to VAT in the customer's country, as set forth under section 7-ter of the Italian DPR 633/1972;
- which are non-VATable persons (B2C) are subject to VAT in the country in which the final consumer is established and uses the service (and not in the place of establishment of the company that performs the service) (Italian tax authority, answer to request for advance ruling no. 409 of 4 August 2022).

#### CUSTOMS DECLARATION

The Italian tax office provides clarification on the registration of the so-called "courtesy copy" issued by the customs forwarding agent and the deduction of VAT paid on imports (Italian tax authority, answer to request for advance ruling no. 417 of 5 August 2022).

#### VAT REIMBURSEMENT

An EU taxpayer that:

- purchased goods in Italy being charged the tax paid by the Italian supplier and that was made available the goods in Italy,
- provided for a supply for export pursuant to section 8 (b) DPR 633/1972

to have VAT paid on purchases reimbursed, must obtain an Italian VAT number through direct identification, or name its own fiscal representative, to activate the ordinary deduction or reimbursement procedure (Italian Supreme Court judgement no. 25789 of 1 September 2022).

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### INDIRECT TAXES

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#### MUTUALLY AGREED TERMINATION

The deed on a mutually agreed termination of a preliminary sale and purchase agreement falls within the scope of section 28 (2) of the Italian DPR no. 131/1986 and is subject to proportional registration tax for services resulting from the termination, such as the repayment of the sum once paid by the prospective purchaser as commitment deposit (caparra confirmatoria) (Italian tax authority, answer to request for advance ruling no. 403 of 2 August 2022).

Kind regards

HAGER & PARTNERS