



## NEWSLETTER NO. 1 - 2023

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Dear Clients,

please find below the most important tax news as introduced under the Italian law 197 of 29 December 2022 (2023 Italian Budget Law), effective as of 1 January 2023.

### ENERGY TAX CREDIT

Energy-intensive businesses, whose cost per kWh of the electricity component calculated on the basis of the average of the 2022 fourth quarter and net of taxes and contingent subsidies, increased by more than 30 percent compared to the same 2019 period, are entitled to a tax credit of 45 percent of the expenses incurred for the electricity component purchased and actually used in the first quarter of 2023.

Unlike energy-intensive companies, those companies equipped with an electricity meter with an available capacity of 4.5 kWh or more are granted a tax credit equal to 35 percent of the expenses incurred for the energy component purchased and actually used in the first quarter of 2023, provided that its price per kWh, calculated on the basis of the average of the fourth quarter of 2022 and net of taxes and contingent subsidies, has increased of more than 30 percent in relation to the average price during the same quarter in 2019.

Natural gas-intensive companies are entitled to a tax credit of 45 percent of the expenses incurred for the purchase of the same gas, consumed in the first quarter 2023 for energy uses other than for thermoelectric uses, if the natural gas reference price - calculated as an average referred to the fourth quarter 2022 of the intra-day market (MI-GAS) reference prices published by GSE - increased by more than 30 percent of the respective average price referred to the same quarter of 2019.

Businesses other than natural gas-intensive businesses are entitled to a tax credit of 45 percent of the expenses incurred for the purchase of the same gas, consumed in the first quarter 2023 for energy uses other than thermoelectric uses, if the natural gas reference price - calculated as an average referred to the fourth quarter 2022 of the intra-day market (MI-GAS) reference prices published by GSE - increased by more than 30 percent compared to the same 2019 period.

The seller, unless it changed compared to 2019, submits to the client (business), upon its request, a notice showing the calculation of the electricity component cost increase and the amount of the tax credit recognised for the first quarter 2023.

The above-mentioned tax credits can be

(i) used for offsets only, without any limitations, until 31 December 2023,

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(ii) transferred as a whole only and with no right to re-transfer them, save for further two transfers in favour of banks and financial intermediaries.

### FLAT TAX SCHEME

The threshold amount for the application of the flat tax scheme, as provided for under the Italian law 190/2014, is increased from EUR 65K to EUR 85K.

The flat tax scheme ceases to be applicable in the year in which proceeds or income received exceed EUR 100 K. In such case, VAT is due as of the transactions made that cause the above-mentioned threshold amount to be exceeded.

### INCREMENTAL FLAT TAX

In 2023, individuals that exercise a business or an artistic or professional activity may opt for the application of a 15 percent substitute tax on a tax base that does not exceed EUR 40K, equal to the difference between the 2023 business income or the self-employed income and the highest business and self-employed income declared in the years between 2020 and 2022, reduced by 5 percent.

### TIPS

Tips paid (even through electronic means of payment) and redirected to employees with an income of no more than EUR 50K paid by accommodation facilities and facilities serving food and drinks pursuant to section 5 of the Italian law 287/1991 are added to the employment income. Unless expressly renounced by the workers, such tips are subject to a 5 percent substitute tax up to 25 percent of the income received during the year.

These sums are excluded from the taxable salary for the calculation of social security contributions and workplace

insurance premiums and are not taken into account for the calculation of the termination benefits (TFR).

### PRODUCTIVITY BONUS

The tax rate of the substitute tax on productivity bonuses pursuant to section 1 (182) of the Italian law 208/2015 for bonuses and sums paid in 2023 is reduced to 5 percent.

### PLASTIC TAX AND SUGAR TAX

The plastic and the sugar tax are postponed to 2024.

### DEPRECIATION SHOPS

The depreciation rates of the cost of operating buildings used to operate businesses in the following industries as specified by the following ATECO codes:

- 47.11.10 (hypermarkets);
- 47.11.20 (supermarkets); 47.11.30 (food discounters);
- 47.11.40 (mini-markets and other non-specialised food stores);
- 47.11.50 (retail sale of frozen products); 47.19.10 (department stores);
- 47.19.20 (retail sale in non-specialised stores of computers, peripheral equipment, telecommunication equipment, audio and video consumer electronics, electrical appliances);
- 47.19.90 (commercial hubs and other non-specialised shops of various non-food products);
- 47.21, 47.22, 47.23, 47.24, 47.25, 47.26, 47.29 retail sale of food products,

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are deductible at no more than 6 percent per annum.

The above-mentioned businesses whose net equity value is predominantly formed by property other than the one used for production or whose business activity is actually aimed at the sale and purchase of the same, by plants and buildings directly used to operate the business, and that adhere to group taxation may apply the 6 percent ratio to buildings rented out to businesses operating in the same industries as above and adhering to the same group taxation.

The provisions apply for the tax period ongoing on 31 December 2023 and to the subsequent four tax periods.

### RESIDENTIAL BUILDINGS ENERGY EFFICIENCY CLASS A - B

50 percent of VAT paid at the purchase made in 2023 of residential property units classified under the energy efficiency classes A or B and sold by property UCIs or by companies that built them is deductible from the individual income tax (IRPEF).

The deduction must be divided into ten instalments of equal amount, starting in the tax period in which the expenses were incurred and continuing during the subsequent nine tax periods.

### EXEMPTION FROM IMU (Municipal Property Tax)

The exemption from IMU is extended to properties that cannot be used and are not available, for which a complaint has been filed with the judicial authorities regarding the criminal offences pursuant to sections 614 (2) and 633 of the Italian criminal code or for whose illegal occupation complaints have been filed or criminal proceedings have been initiated by the judicial authorities.

The taxpayer informs the interested municipality according to electronic modalities still to be defined by the Italian Ministry of Economics and Finance (MEF) about being

in possession of the requirements entitling to the exemption.

### BLACK LIST COSTS

The following provisions are introduced to section 110 of the Italian tax code (TUIR)

<<9-bis. Expenses and other negative components deriving from transactions that have been actually carried out between resident companies or companies established in countries or territories not cooperating for fiscal purposes are allowed as deduction within the limits of their normal value determined pursuant to section 9....

9-ter. The provisions under paragraph 9-bis do not apply if companies resident in Italy provide evidence that the transactions carried out comply to an actual economic interest and that the same have been actually implemented. The expenses and deductible other negative components .. are shown separately in the income tax return.

The Italian tax authority, before issuing a tax assessment notice or a notice on higher taxes due, must notify a specific notice in which the interested taxpayers are informed of the possibility to provide the evidence under the first paragraph within the deadline of ninety days. If the Italian tax authority does not deem appropriate the evidence provided, the tax assessment notice must contain specific grounds. To this end, taxpayers may call upon the Italian tax authority ...>>

The above-mentioned provisions do not apply to transactions between non-residents subject to the CFC scheme.

### DIVIDENDS RECEIVED

Resident companies may opt to exclude profits and profit reserves from income:

- if they have not been distributed yet on the date of entry into force of the 2023 Italian Budget Law,

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- if they result from the financial statements of non-residents, directly or indirectly controlled, relating to the business year ended in the tax period before the one ongoing on 1 January 2022.

In such case, profits are subject to a substitute tax of:

- 9 percent for corporate taxpayers (IRES);
- 30 percent for individual taxpayers (IRPEF).

The substitute tax rate is reduced by 3 percentage points:

- relating to profits obtained within the final payment deadline for income taxes owed for 2023,
- provided that the same are allocated for a period of no less than two business years to a specific net equity reserve

The substitute tax is determined in proportion to the shareholding held in the foreign subsidiary, taking into account the proportional reduction (so-called *effetto demoltiplicativo*).

The option may be exercised separately for each foreign subsidiary and with regard to all or part of the relevant profits and profit reserves.

The fiscally recognised cost of the shareholding in the foreign entity is increased up to the sale price by the amount of profits and profit reserves subjected to substitute tax and reduced by the amount of the same distributed profits and profit reserves.

### CAPITAL GAINS FROM PROPERTY COMPANIES

Capital gains deriving from the sale of shareholdings in non-resident companies:

- not traded on regulated markets,
- whose value is derived by more than half, directly or indirectly, from properties located in Italy, are deemed yielded in Italy.

To this end, the immovable properties at the production

or exchange of which the business activity is actually directed, as well as the properties used directly in the conduct of the business, are not relevant.

The above-mentioned provisions do not apply to capital gains achieved by UCIs.

### TAX-ADVANTAGED ALLOCATION OF ASSETS TO SHAREHOLDERS

Businesses may allocate/transfer to shareholders immovable properties other than operating properties due to their intended use or movable properties registered with public registers not used as operating assets for the business activity on a preferential basis by 30 September 2023.

By the same deadline, companies that have the management of the above-mentioned assets as their sole or main purpose, may be transformed into simple companies.

A substitute tax for income tax and regional tax on productive activities (IRAP) applies at 8 percent on the difference between:

- the normal value of the allocated assets or, in the event of transformation, of the assets owned at the time of transformation, and
- their fiscally recognised cost.

Such percentage is elevated to 10.5 percent for companies deemed non-operational in at least two of the three tax periods preceding the one ongoing at the time of allocation, of transfer or of transformation.

Reserves under tax suspension cancelled due to the allocation of the assets to shareholders and those of companies that are transformed are subject to a 13 percent substitute tax

The normal value of immovable properties may be determined to be the same as the one resulting from the application of the multipliers determined for registration fee purposes to the amount of the cadastral income.



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Any contingent registration fees applicable to tax-advantaged allocations/transfers are reduced to half and the cadastral and mortgage fees apply at a fixed rate.

The substitute tax must be paid at 60 percent by 30 September 2023 and the remaining amount by 30 November 2023.

### RECALCULATION OF COSTS OF SHAREHOLDINGS AND LAND

It is allowed to recalculate the fiscal cost of listed and unlisted shareholdings and land held by individuals as of 1 January 2023

The fiscal cost of listed shareholdings held on 1 January 2023 may be assumed to be equal to the normal value determined pursuant to section 9 (4.a) of the Italian tax code (TUIR) with reference to December 2022.

A value assessment report must be drawn up and sworn by 15 November 2023.

A 16 percent substitute tax is due on the re-determined values.

### TAX BENEFITS FOR PROFESSIONAL AGRICULTURAL ENTREPRENEURS (IAP)

The tax benefits pursuant to section 2 (4-bis) of the Italian law 194/2009 are extended to <<deeds of transfer against consideration of land and related appurtenance qualifying as agricultural according to current urban planning instruments, in favour of individuals aged less than 40 that declare in the deed of transfer that they intend to register with the relevant social security and welfare fund for farmers and professional agricultural entrepreneurs within the deadline of 24 months>>.

### UCIS

Capital gains under section 44 (1.g) of the Italian tax code

(TUIR) and other income under section 67 (1.c-ter) of the Italian Tax Code (TUIR) resulting from the sale or the reimbursement of UCI shares are deemed yielded upon the taxpayer's option, and are hence subjected to a 14 percent substitute tax on the difference between:

- the share value on 31 December 2022 and
- the purchase or signature cost or value.

The option is exercised by 30 June 2023 through the relevant notice submitted to the intermediary with which the custody, administration, portfolio management, or another stable relationship is maintained.

The substitute tax is payable by 16 September 2023

If there is no custody, administration, portfolio management relationship, or other stable relationship, the option shall be exercised in the tax return for the year 2022 by the taxpayer, who shall pay the substitute tax by the payment deadline for the final income tax balance.

The option extends to all shares belonging to the same homogeneous category held on 31 December 2022 and on the date on which the option is exercised.

### SOLIDARITY CONTRIBUTION ON EXCESS PROFITS 2023

A solidarity contribution on excess profits for 2023 is introduced on behalf of:

- those who exercise the activity of electricity production, methane gas, or natural gas extraction,
- those who resell electricity, methane, and natural gas,
- those who exercise the activity of production, distribution, and trade of oil products;
- those who permanently import electricity, natural gas, methane gas or oil products for subsequent resale or who introduce such goods to the territory of the State from other EU countries.

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The solidarity contribution is due if at least 75 percent of the proceeds of the tax period before the one ongoing on 1 January 2023 are obtained from the above-mentioned activities.

The solidarity contribution is determined by applying a 50 percent rate on the amount of the share of total income determined for corporate tax purposes (IRES) in the tax period preceding the one ongoing on 1 January 2023, that exceeds the average of the total income determined in the four tax periods preceding the one ongoing on 1 January 2022 by at least 10 percent.

The amount of solidarity contribution cannot exceed a share of 25 percent of the net equity value at the balance sheet date of the business year preceding the one ongoing on 1 January 2022.

The solidarity contribution is payable within the sixth month following the balance sheet date month of the business year preceding the one ongoing on 1 January 2023. If the financial statements are approved after four months from the balance sheet date, payment is provided for by the end of the month following the approval of the financial statements. If the business year does not coincide with the calendar year, the solidarity contribution is payable by 30 June 2023.

The solidarity contribution is not deductible from income tax and from regional tax on productive activities (IRAP).

### SOLIDARITY CONTRIBUTION ON EXCESS PROFITS 2022

The solidarity contribution under section 37 of the Italian law-decree 21/2022 is amended as follows:

The solidarity contribution is due if at least 75 percent of the 2021 turnover is derived from the activities indicated therein.

Sales and purchases of shares, obligations, and other securities representing goods and company shares between taxpayers are not relevant to determine the tax base.

Sales not subject to VAT due to the lack of the territorial requirement are irrelevant if and to the extent that the related purchases are not territorially relevant for VAT purposes.

If, as a result of the above regulatory changes, the amount of the contribution is:

- greater than the total amount due by 30 November 2022, the remaining amount shall be paid by 31 March 2023;
- lower than the total amount due by 30 November 2022, the higher amount paid may be used for off-sets as from 31 March 2023.

### CRYPTOCURRENCIES

Tax provisions relating to cryptocurrencies are introduced.

### SALES THROUGH ELECTRONIC INTERFACE

The VAT payer that - through the use of electronic interfaces, such as a virtual market, a platform, a portal, or similar means - encourages the sale of movable properties (to be identified by a decree to be adopted by the Italian Ministry of Economics and Finance (MEF)) located in Italy to a purchaser (no VAT payer) must submit the data relating to the suppliers and the transactions carried out to the Italian tax office.

### PENALTY-FREE TAX NOTICES

Sums payable further to automatic controls on the income tax returns relating to the tax periods ongoing on 31 December 2019, on 31 December 2020, and on 31 December 2021, for which the assessment deadline has not expired yet on the date of entry into force of the Budget Law or for which the same notices are submitted after such date, may be settled through payment of the taxes

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and the social security contributions, the interest, and the additional sums owed, but with a reduction of the penalties to 3 percent.

Sums payable further to automatic controls on the income tax returns, for which a payment by instalments is still in progress on the date of entry into force of the Budget Law, may be settled by payment of the remaining debt for taxes and social security contributions, interest, and additional amounts, and with a reduction of the penalties to 3 percent.

As to the sums payable further to automatic controls on the income tax returns relating to the tax period ongoing on 31 December 2019, the limitation period for the notification of payment notices is extended by one year.

### **VOLUNTARY CORRECTION OF FORMAL IRREGULARITIES**

Formal irregularities that are not relevant for tax base determination for income taxes, VAT, regional tax on productive activities (IRAP), committed until 31 October 2022 may be corrected through (i) the payment of a sum of EUR 200 for each tax period to which the infringements refer to, (ii) the removal of the irregularities and omissions.

### **VOLUNTARY CORRECTION OF NON-FORMAL IRREGULARITIES**

Infringements relating to the taxes administered by the Italian tax authority relating to income tax returns regularly filed for the tax periods ongoing on 31 December 2021 and the previous ones, may be corrected as follows:

- payment of 1/18 of the minimum penalty prescribed by the law, plus the tax and interest due.
- removal of the irregularity.

The sums due may be paid in eight quarterly instalments of the same amount, it being understood that the first instalment is payable by 31 March 2023. The instalments

following the first one are payable by 30 June, 30 September, 20 December and 31 March of each year. On such amounts interest shall accrue at 2 percent per annum.

The correction is permitted provided that the infringements have not yet been actioned at the date of payment of the sums due or at the date of payment of the first instalment.

The correction is not permitted for voluntary disclosure of financial assets and equity constituted or held abroad.

### **SETTLEMENT OF TAX NOTICES**

Tax assessment settlements relating to:

- (i) reports finding infringements ("PVC") delivered by 31 March 2023,
- (ii) tax assessment notices and rectification and payment notices not actioned yet and still actionable at the date of entry into force of the Budget Law and those notified thereafter by 31 March 2023,
- (iii) invitations to appear pursuant to section 5-ter of the Italian law-decree 218/1977 notified by 31 March 2023

the penalties are reduced to 1/18 of the minimum amount provided for by the law.

Tax assessment notices, rectification and payment notices, notices of collection:

- not actioned yet and still actionable at the date of entry into force of the Budget Law,

and

- those notified by 31 March 2023,

can be settled by acceptance and with a reduction of the penalties to 1/18.

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The sums due may be paid even by instalments, it being understood that they must consist in no more than 20 instalments of equal amount; interest at legal rate (5 percent) shall accrue on the instalments following the first one. Any offsetting is excluded.

Notices issued in the framework of voluntary disclosure proceedings pursuant to section 5-quater of the Italian law-decree 167/1990 are excluded from this settlement.

### PENDING DISPUTES

The disputes allocated to the tax jurisdiction in which the Italian tax authority or the Italian Customs Agency is a party, ending at any stage and level of the proceedings, including before the Italian Supreme Court, even after referral, at the date of entry into force of the Budget Law, may be settled by the payment of an amount equal to the value of the dispute (i.e., only taxes)

If a pending appeal is registered in the first instance, the dispute can be settled with the payment of 90 percent of the taxes.

If the Italian tax authority is unsuccessful in the last or the sole non-precautionary judicial ruling filed at the date of entry into force of the Budget Law, the disputes may be settled through the payment of:

- 40 percent of the taxes in the event of losing of the appeal further to a first instance ruling;
- 15 percent of the taxes in the event of losing of the appeal further to a second instance ruling.

In the event of a partial acceptance of the appeal or in any case of a partial losing of the appeal, the amount of the tax is due in full for the part of the notice confirmed by the ruling and at a reduced rate for the annulled part.

The tax disputes pending before the Italian Supreme Court, in relation to which the Italian tax authority was unsuccessful in all previous instances, may be settled with the payment of an amount equal to 5 percent of the taxes.

The tax disputes relating only to penalties which are not connected to the taxes may be settled with the payment of 15 percent, if the competent Italian tax office is unsuccessful in the last or only non-precautionary judicial ruling and of 40 percent in all other cases.

The disputes relating only to penalties connected to taxes to which they refer to may be settled without any payment, if the relationship relating to the taxes has been settled, even with other modalities than the ones provided for under this tax-advantaged settlement scheme.

The amounts already paid under any title whatsoever during the pendent dispute are deducted from the amounts due. In any case, a settlement shall not give rise to a reimbursement of sums already paid, even if they exceed the sums owed under the settlement itself.

### SETTLEMENT OF PAYMENT NOTICES

Tax debts with a residual amount of up to EUR 1,000 - including principal, interest for late tax role registration, and penalties - resulting from claims entrusted to tax collection agents from 2000 to 2015, are cancelled automatically on 31 March 2023.

Tax debts resulting from claims entrusted to tax collection agents from 2000 until 30 June 2022 may be settled by payment of the sums due as principal, reimbursement of the expenses for enforcement proceedings, and notification of the payment notices. On the contrary, sums entrusted to the collection agents by way of interest and penalties, late interest, penalties and additional sums, and premium are not due.

The sums owed must be paid in a single instalment by 31 July 2023 or in no more than 18 instalments.

### "ENHANCED DERIVATION" WITH CORRECTION OF ACCOUNTING ERRORS

"Enhanced derivation" in the event of correction of accounting errors is limited to companies that have their financial statements audited.



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### SIMPLIFIED ACCOUNTING

The simplified accounting threshold amounts are raised to EUR 500K for service providing businesses and to EUR 800K for other businesses.

### RESEARCH AND DEVELOPMENT TAX CREDIT

Those who unduly used the research and development tax credit for offsets may apply for voluntary repayment of the same tax credit to the Italian tax office by 30 November 2023 (instead of 31 October 2023).

The certifications relating to the expenses for research, development, and innovation activities may be requested at the sole condition that the infringements relating to the use of the relevant tax credit have not been actioned yet.

### THRESHOLD AMOUNT FOR THE USE OF CASH

The threshold amount for the use of cash under any title is increased to EUR 4,999.99 as of 1 January 2023.

Yours sincerely,

HAGER & PARTNERS