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DIRECT TAXES

TRANSFER OF RESIDENCE

The Italian tax authority provides clarifications on the taxation of an employee who moves from Italy to Switzerland during the year (while remaining registered in Italy) with particular regard to the application of the provisions of the double taxation agreement concerning the division of the tax period (Italian tax authority, answer to request for advance ruling no. 370 as of 04 July 2023).

ALLOCATION OF THE IRAP TAX CREDIT IN THE EVENT OF A DEMERGER

The IRAP tax credit shown in the financial statements of the demerging company and thus being part of the assets and accounts of the demerging company constitutes a "subjective position" which (individually or collectively) is not linked to the demerged assets. Hence, such position shall be divided between the demerging company and the acquiring company in proportion to their respective net assets pursuant to section 173 (4) of Italian Tax Code (Italian tax authority, answer to request for advance ruling no. 368 as of 04 July 2023).

FRONTIER-WORKERS IN SWITZERLAND

The new agreement on frontier-workers between Italy and Switzerland entered into force on 17 July 2023 and applies from 1 January 2024 (Agreement on frontier-workers between Italy and Switzerland, Law no. 83 as of 13 June 2023).

PARTICIPATION EXEMPTION

A foreign company that sells a participation in an Italian company and thereby generates a capital gain (cf. double taxation agreement between Italy and France) is subject to taxation at the rate of 1.20% of the capital gain, provided that the conditions provided for by the participation exemption scheme pursuant to section 87 of Italian Tax Code are met (Supreme Court ruling no. 21261 as of 19 July 2023).

AGREEMENT BETWEEN THE EU AND THE SWISS CONFEDERATION

The agreement entered into between the EU and the Swiss Confederation on 26 October 2004 extended the dividend taxation scheme provided for in the Parent-Subsidiary Directive also to dividend distributions from subsidiaries resident in EU Member States to parent companies in Switzerland.

In this context, the clarifications provided by resolution no. 93/2007 are considered superseded if the partial income tax exemption of the Swiss parent company entails the exclusion of the tax benefits provided for in section 9 of the agreement between the EU and the Swiss Confederation, with the consequent application of a withholding tax on dividend distributions from Italian subsidiaries (Italian tax authority's resolution no. 46 as of 31 July 2023).

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MERGER BETWEEN FOREIGN COMPANIES

The tax neutrality scheme pursuant to section 172 of Italian Tax Code may also apply in the case of a merger between foreign companies to which the EU Directive on mergers and demergers does not apply (in which case the provisions of section 178-181 of the Italian Tax Code would apply), provided that the following conditions are met at the same time:

- the transaction qualifies as a merger pursuant to the provisions of the Italian civil code;
- the affected taxpayers have a similar legal form as the one provided for under the laws of Italy;
- the transaction causes effects in Italy on the tax position of at least one affected taxpayer.

In this case, the provision of section 11 (3) of Italian Ministerial Decree as of 1 March 2018 may also be deemed applicable and, hence, the merger does not interrupt the group taxation scheme, if the requirements set forth in section 117 of Italian Tax Code continue to be met (Italian tax authority, answer to request for advance ruling no. 400 as of 27 July 2023).

VAT

INVOLVEMENT OF THE PERMANENT ESTABLISHMENT

For VAT purposes, the involvement of the Italian permanent establishment in sales and purchases in Italy is also deemed to be given if the permanent establishment - even if not directly involved in the negotiation of the sales and purchase agreements - carries out business transactions involving the following:

- customer relations management (i.e. quantities to be ordered, any qualitative change to products subject to prior approval of the parent company etc.);
- stock management and warehouse supervision;
- relations with production facilities;
- organisation of deliveries;
- relations with transporters from third-party warehouses to customers;
- assistance with invoicing and accounting;
- technical support;
- customer feedback and quality control.

Thus, in this case the permanent establishment is considered as tax debtor for sales and purchases in Italy.

Hence:

- customs declarations shall show the VAT number of the permanent establishment in case of imports of goods;
- in the event of an intra-Community acquisition of goods, VAT shall be paid in Italy by the permanent establishment by means of supplier's invoice supplement;
- in the event of purchases of services from Italian VAT payers, the latter issue an invoice to the permanent establishment and pay the VAT.

In the event of sales, the permanent establishment issues an invoice with VAT, while in the event of intra-Community supplies, an invoice without VAT is issued in accordance with section 41 of Italian Legislative Decree no. 331/1993 (Italian tax authority, answer to request for advance ruling no. 374 as of 10 July 2023).

If a non-resident company has a permanent establishment in the EU Member State where VAT is due, this permanent establishment is deemed, for the purposes of the VAT refund claim, not to be involved in the supply of goods or services within the meaning of section 192-bis (b) of Directive 112/2006 if the financial resources of the permanent establishment are used for administrative support such as accounting, invoicing and debt recovery only. However, if an invoice is issued with the VAT ID assigned to the permanent establishment in the EU Member State, this permanent establishment is deemed to have been involved in the supply of goods or services in that Member State until proven otherwise. (Supreme court ruling no. 11608 as of 3 May 2023).

VAT DEDUCTION FOR HOLIDAY HOMES

In the event of an accommodation business which is also carried out via an outsourcer in accordance with the sector-specific provisions, the following applies:

- the relevant services are subject to VAT at the rate of 10 % in accordance with point 120) of Table A, Part III annexed to the VAT Regulation;
- the VAT on the purchase of goods or services related to the business is deductible. The same applies to the VAT on the residential property used for business purposes (Italian tax authority, answer to request for advance ruling no. 392 as of 24 July 2023).

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VAT RATE OF A COMPLEX SERVICE

In the event of several services subject to VAT with different VAT rates, in which case only one consideration is indicated as a total sum, the highest VAT rate shall apply. For the application of different VAT rates, the exact consideration for the respective services shall be indicated individually (Supreme court ruling no. 20909 as of 18 July 2023).

SALE OF A RUIN

The sale of a ruin classified as "dilapidated" in building register category F/2 according to objective circumstances as evidence of its state is subject to VAT at the usual rate (Italian tax authority, answer to request for advance ruling no. 405 as of 31 July 2023).

SALE OF A REAL ESTATE COMPLEX

The sale of a real estate complex consisting of several different properties that are not complementary to each other and are not used for business purposes, which is characteristic of a business, is subject to VAT (Italian tax authority, answer to request for advance ruling no. 404 as of 28 July 2023).

SALE OF A SET OF ASSETS

The sale of a set of assets with "work results" (plans, developed prototypes, design services and drawings") and "inventories" without "production potential" useful for the conduct of the business is not a transfer of business but a sale of individual assets (Italian tax authority, answer to request for advance ruling no. 399 as of 27 July 2023).

PERMANENT ESTABLISHMENT

VATable persons having their registered office outside the EU and receiving services in an EU Member State do not have a permanent establishment in the Member State of the service provider if the non-EU VATable person, has a business structure with appropriate personnel and technical means that may constitute a permanent establishment. This is also the case where the service provider, in fulfilment of an exclusive contractual obligation on behalf of such non-EU VATable person provides services as well as ancillary or additional services which contribute to the business activity of the non-EU VATable person (ECJ, c-232/22, 29 June 2023).

OTHER INDIRECT TAXES

ESTABLISHMENT OF AN AGRICULTURAL LAND LEASEHOLD

The establishment of an agricultural land leasehold (for the construction of a solar park) is subject to registration fee at the rate of 15 % as well as to mortgage and cadastral fee at a fixed rate of Euro 50 each (Italian tax authority, answer to request for advance ruling no. 365 as of 3 July 2023).

TAX BENEFITS FOR "FIRST HOME" BUYERS

The tax benefits for "first home" buyers pursuant to section 1, note II-bis of the Tariffs, part I, annexed to Italian DPR 131/86 may also be claimed for the purchase of two adjoining properties located on two different floors, provided that the two real estate units are merged within 3 years (Supreme Court ruling no. 21721 as of 20 July 2023).