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### DIRECT TAXES

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#### CORPORATE WELFARE

The Italian tax authority provides clarifications on the increase to EUR 3,000 of the fringe benefits tax-exempt threshold under article 51(3) of the Italian Tax Code (TUIR), for employees with fiscally dependent children.

It is clarified that withholding agents recognize the tax benefit further to a written statement to be submitted by the employees. Employees, to whom the prerequisites for the recognition of the tax benefit no longer apply (i.e., because after the submission of the statement the children earn an income that exceeds the income thresholds set forth by law for fiscally dependent children in 2023), must immediately inform their employer thereof. The employer recovers the undue tax benefit from the remuneration paid in pay cheque periods subsequent to the one in which such statement is rendered and, in any case, within the deadlines for year-end settlement of tax or upon employment termination, if the employment relationship is terminated during 2023 (Italian tax authority, newsletter 23 of 1 August 2023).

#### REFUNDS OF CHARGING EXPENSES FOR E-VEHICLES

Refunds paid by the employer to its employees for electricity expenses incurred to charge vehicles assigned to them for business and for private use add to the employees' taxable income (Italian tax authority, answer to request for advance ruling 421 of 25 August 2023).

#### TAX CREDIT FOR THE ENERGY SECTOR

The Italian tax authority provides clarifications on the following tax benefits to support companies in relation to the expenses incurred for the purchase of electricity and gas:

- article 1 (3) *Aiuti-quater* decree “Exceptional contribution under the form of tax credit for companies to purchase electricity and natural gas in December 2022”;
- article 1 (2-8), 2023 Italian budget law;
- article 1 (13-14 and 16), 2023 Italian budget law;
- article 2 utility bills decree, “Reduction of VAT and general charges in the natural gas sector for the 2023 second quarter”;
- article 4 utility bills decree, “Exceptional contribution under the form of tax credit for companies to purchase electricity and natural gas”;
- article 3-bis law-decree 57/2023, “Urgent measures to contain the effects of price increases in the electricity and natural gas sector” (Italian tax authority, newsletter 24 of 2 August 2023).

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### SMART WORKING

The Italian tax authority provides clarifications and application instructions on the tax profiles of remote work (so-called smart work), with special reference to the most recent practice guidelines, even for the application of tax benefits aimed at individuals, who become resident in Italy to work mainly in Italy (so-called "repatriates") (Italian tax authority, newsletter 25 of 2 August 2023).

### FRONTIER-WORKERS

The Italian tax authority provides clarifications on tax aspects for frontier-workers in the light of the new international agreement concluded with Switzerland, and the news introduced by the relevant ratification law (Italian law 83 of 13 June 2023, published in the Italian Official Gazette 151 of 30 June 2023) (Italian tax authority, newsletter 25 of 18 August 2023).

### AIF: DIVIDENDS AND CAPITAL GAIN

An alternative investment fund (AIF) established in an EU country (Luxembourg), whose Manager is fiscally resident in Luxembourg and subjected there to the supervisory forms provided for under the AIFM directive, benefits from the withholding tax exemption scheme:

- on dividends paid by the directly owned company resident in Italy pursuant to article 27 (3) of the Italian DPR 600/1973;
- on the capital gain relating to equity investments in companies resident in Italy pursuant to article 1 (633) of the Italian law 178/2020 (Italian tax authority, answer to request for advance ruling 409 of 1 August 2023).

### APPLICATION OF DOUBLE TAXATION AGREEMENT BETWEEN ITALY AND GERMANY TO A GERMAN PARTNERSHIP

A German tax-transparent partnership may invoke the application of article 13 (4) of the double taxation agreement between Italy and Germany and, hence, the capital gain from the sale of an equity investment owned in an Italian company shall be subjected to tax in Germany only (Italian tax authority, answer to request for advance ruling 418 of 16 August 2023).

### DIVIDEND WASHING

The dividend washing scheme under article 109 (3-bis - 3-quinquies) of the Italian Tax Code does not apply to the profits of a partnership, even if owned by a corporation (Italian Supreme Court judgement 23652 of 3 August 2023).

### TAX CREDIT FOR TAXES PAID ABROAD

Income taxes paid abroad by an Italian company may be deducted not only from corporate tax (IRES) but also from regional tax on productive activities (IRAP) (Italian Supreme Court judgement 21047 of 18 July 2023).

### VAT

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#### VAT RATE

The 10 percent VAT rate, as provided for under 127-quinquies and 127-septies of the table enclosed to the VAT decree applies to the construction of a new neighbourhood market. The reduced 10 percent VAT rate applies, although the new market will host the operators of the old market (subject to renovation works) for a limited period of three years and at the end of the period of use shall be located close to another and different neighbourhood market in order to carry out the same restructuring. The fact that the construction (neighbourhood market) is destined to urbanised areas or to areas still to be urbanised and intended to increase the quality level for the residents of a certain township is relevant for qualifying the construction (neighbourhood market) as "secondary urbanisation work" (Italian tax authority, answer to request for advance ruling 415 of 3 August 2023).

#### VAT CREDIT NOTE

If an express termination clause contained in an agreement is exercised and thereupon a transaction for which an invoice has been issued is no longer performed, the issuance of a VAT credit note is lawful, even if the conditions for exercising the express termination clause are contested in court. To this end it is not necessary to wait for a formal (legal or judicial) deed of assessment of the occurrence of the above reason for termination (Italian Supreme Court 17438 of 19 June 2023).

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### TRAVEL AGENCIES

A service rendered by a VATable person that consists in the purchase of accommodation services from other VATable persons and the resale of the same to other business operators falls under the special VAT scheme for travel agencies, even if such services are not accompanied by any additional services (ECJ, Case C-108/22 of 29 June 2023).

### REFUND OF EXCESS VAT

The principles of neutrality and effectiveness of VAT request that the purchaser is entitled to directly request the refund of undue VAT to the Italian tax authority that it paid to its suppliers and that the latter paid to the Italian tax authority, as well as the relevant interest, if:

- first, the purchaser cannot claim the reimbursement from the suppliers any more due to the limitation period provided for by national law and
- second, there is a procedural possibility of those suppliers subsequently claiming reimbursement of the overpaid tax from the tax authorities after having adjusted the invoices that were issued initially to the receiver of those supplies (ECJ, Case C-4538/22 of 7 September 2023).

### REFUND OF UNDUE VAT

If:

- due to a final order a supply of goods qualifies as business sale and is subjected to registration fees (instead of VAT), and
- VAT was already paid by the seller, without having been reimbursed by the purchaser of the amount charged to him,

the seller is entitled to refund in the light of the Community-law principles of neutrality and effectiveness during the two years during which the order is final pursuant to article 30-ter (2) of the Italian DPR 633/72. This applies if the adjustment of VAT by the purchaser does not cause any prejudice to the Italian treasury (Italian Supreme Court judgement 25013 of 22 August 2023).

### PERMANENT ESTABLISHMENT

As to VAT, non-residents with a permanent establishment in Italy may not access the refunds scheme under article 30 (3.e) of the VAT decree, not even in relation to transactions carried out directly or without the involvement of the permanent establishment. This applies because for VAT purposes the non-resident entity merges "in its entirety" into that of the permanent establishment and, hence, the right to claim VAT through the deduction mechanism is exercised (Italian Supreme Court judgement 25685 of 4 September 2023).