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DECREE ATTACHED TO THE ITALIAN BUDGET LAW

The following tax measures were introduced under the Italian law-decree no. 145 of 18 October 2023 (published in the Italian Official Gazette no. 244 of 18 October 2023).

POSTPONEMENT OF DEADLINES

Individuals with a VAT registration number and proceeds or income in 2022 of no more than EUR 170,000 provide for the second tax prepayment owed according to the tax return (excluding social security contributions and mandatory insurance premiums (INAIL)), and limited to the 2023 tax period only:

- by 16 January 2024
or
- through five monthly instalments of equal amount as of January 2024 due on day 16 of each month (with interest accruing on the instalments after the first one).

R&S TAX CREDIT

The deadline by which companies may adhere to the procedure for the reversal of the research and development tax credit is postponed to 30 June 2024:

- accruing as of the tax period after the one ongoing on 31 December 2014 and until the one ongoing on 31 December 2019, and unduly used for offsetting on 22 October 2021.

2024 SOLIDARITY CONTRIBUTION PAYABLE BY ENERGY COMPANIES

To determine the 2023 solidarity contribution payable by energy companies - as provided for under article 1 (115-119) of the Italian law no. 197/2022 - net equity reserves utilized and earmarked under tax suspension or to cover deducted surpluses (pursuant to article 109 (4 b) of the Italian Tax Code (TUIR) in force before the amendments to article 1 (33 q) of the Italian law no. 244/2007) are not included in the determination of total income related to the tax period prior to the one ongoing on 1 January 2023 within the limit of 30 percent of the reserves resulting at the end of the business year prior to the one ongoing on 1 January 2022.

By the same token, the following items must be excluded from the calculation of the average of the total incomes yielded in the four previous tax periods:

- net equity reserves utilized that added to the income in the above-mentioned four tax periods,
- up to the amount excluded in the tax period before the one ongoing on 1 January 2023.

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The provision contained in article 4 (1) of the Italian law-decree that allowed for the payment of the solidarity contribution by 30 November is repealed.

A solidarity contribution equal to the benefit obtained is introduced for 2024 only on behalf of those taxpayers that avail themselves of the above provision. Such solidarity contribution must be paid in two instalments of equal amount by 30 May 2024 and by 30 October 2024.

DIRECT TAXES

CONTRIBUTION OF "CAPITAL LOSS" EQUITY INVESTMENTS

The special tax scheme ("*realizzo controllato*") under article 177 (2) and (2-bis) of the Italian Tax Code (TUIR) is also applicable to contributions of "capital loss" equity investments or whenever further to contribution the transferee increases its net equity by less than the tax value of the equity investments received.

In such event, however, the transferor may not deduct the capital loss arising from the negative difference between the (i) lower value of the equity investment received further to contribution (equal to the net equity increase) and (ii) the tax value of the conferred equity investment (Italian tax authority, decision no. 56 of 16 October 2023).

LIABILITIES OF A DISSOLVED CORPORATION

There is no joint liability between the shareholders and the dissolved corporation. Hence, the tax authorities may not claim debt against the corporation from a shareholder (Italian Supreme Court, judgement no. 28817 of 17 October 2023).

VAT

OMITTED TAX RETURN

If a tax return is omitted, the fixed penalty under article 5 1) of the Italian legislative decree no. 471/1997 applies, provided that taxes are paid nonetheless within ninety days from the expiry of the regular tax return filing deadline.

If the taxes are paid after the expiry of such deadline, a proportional penalty ranging from

- 120 percent to 240 percent of the amount of taxes due or
- from 60 percent to 120 percent of the amount of taxes due, if the omitted tax return is filed within the tax return filing deadline for the subsequent tax period and, anyway, before the beginning of any formally notified administrative assessments (Italian tax authority, answer to request for advance ruling no. 450 of 27 October 2023).

DOUBLE INVOICING

If the same XML file is submitted to the SdI platform twice, the error may be remedied through registration of the documents submitted twice and the issuance of a VAT credit note (Italian tax authority, answer to request for advance ruling no. 447 of 13 October 2023).

REGISTRATION FEES

The preferential scheme under article 20 of the Italian law 10/1977 (fixed registration fees and exemption from mortgage and cadastral fees) would be applicable to construction works falling under to the same Italian law no. 10/1977 only (i.e., <<to transfers aimed at urban transformative planning with no speculative intentions, that perform an apportioning and distributive function of the positions concerned and not a negotiation exchange function>>).

However, <<all those negotiation transactions that, while forming part of a broader public law planning, in fact realise merely individualistic interests>> would continue to be excluded from this tax relief (Italian tax authority, answer to request for advance ruling no. 451 of 27 October 2023).

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INHERITANCE AND DONATION TAX

POOL OF ASSETS

For inheritance tax application, the "inherited" pool of assets scheme under article 8 (4) of the Italian inheritance tax act (TUS) must be deemed "implicitly repealed". This means that the same is neither applicable to determine tax rates nor to calculate tax allowances.

The "donated" pool of assets schemes continues to apply for donation tax purposes only, even though donations occurred between 25 October 2001 and 28 November 2006 (i.e., the period in which the inheritance and donation tax scheme was repealed) must be excluded thereof (Italian tax authority, newsletter no. 29 of 19 October 2023).

CADASTRAL INCOME

The supporting "wind tower" must be considered as a "component" of a wind power plant since it is instrumental to the production process. Hence, it must not be included in the determination of the cadastral income. In this way the Italian tax authority recognises case-law according to which a "rotor-nacelle-tower" set of parts must be excluded from the cadastral estimate since it forms a plant unicum and is functional to the specific energy production process, without prejudice to plant-specific design features, if any (Italian tax authority, newsletter no. 28 of 16 October 2023).

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