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DIRECT TAXES

SIMPLIFICATION DECREE

The Italian tax authority provides clarifications relating to the Italian legislative decree no. 11/2024 on the «Streamlining and simplification of provisions on tax obligations» (so-called “*Adempimenti* decree”), with a special focus on the amendments connected to the payment of taxes, to mandatory notices, to digital services, to electronic payment means and to the submission of notices and summons by the tax authorities (Italian tax authority, newsletter no. 9 of 2 May 2024).

NON-OPERATIVE COMPANIES

The Italian tax authority rejected the request for derogation from the rules for non-operative companies filed by a company that granted a property for use against a monthly fee below market price plus an additional sum as deposit (Italian tax authority, answer to request for advance ruling no. 97 of 23 April 2024).

PARTICIPATION EXEMPTION

A company, whose activity is limited to the mere obligation to assume the risk of the economic and financial management of another company and to make sure that such company disposes of the financial means required for its functioning and the achievement of its institutional objectives, does not meet the requirement of commerciality.

Such an activity does not qualify as commercial activity pursuant to article 87 (1d) of the Italian Tax Code (TUIR) since it refers to the mere passive management and is limited to the earning of profits and the bearing of losses (Italian tax authority, answer to request for advance ruling no. 96 of 23 April 2024).

TAX CREDIT FOR DISADVANTAGED ECONOMIC AREAS (DEA)

The DEA tax credit under the Italian legislative decree no. 91/2017 and the Southern Italy tax credit under the Italian law no. 208/2015 cannot be combined <<because they do not constitute two separate tax incentives, but a single incentive, which differs according to the geographical area in which the investments eligible under the respective provisions are made>> (Italian tax authority, answer to request for advance ruling no. 94 of 17 April 2024).

GIFTS FOR EMPLOYEES

Gifts for employees - e.g. a bag of coffee, a free drink per day and merchandising items such as mugs with a corporate logo - qualify as fringe benefits. Hence, if the value of the goods assigned to employees exceeds the limit set forth under article 51 (3, third sentence) of the Italian Tax Code (TUIR), it qualifies as income from employment (Italian tax authority, answer to request for advance ruling no. 89 of 11 April 2024).

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DEFAULT ON RECEIVABLES

The loss arising from factoring without recourse of a receivable is deductible if the taxpayer provides definite and precise proofs. It is not sufficient to agree a fee, which is lower than the nominal value of the sold receivable and the loss emerging from the sale, but also the elements that led to the transaction and the partial recovery of receivable's nominal value only must be specified. An unjustifiably significant difference between the fee for the sale and the nominal value of the sold receivable shows the blatant non-viability of the transaction. Therefore, it may be an indicator of its disbursing rather than its productive nature, and hence of the lack of business-relatedness of the negative item (Italian Supreme Court judgement no. 8714 of 3 April 2024).

CONTINGENT ASSETS

To determine business income, the contingent asset may be ascertained as follows:

- failure to invoice the negative income items reported in previous tax periods for a long period of time,
- failure to deliver invoices or payment proofs (Italian Supreme Court judgement no. 4666 of 21 February 2024).

VAT

CERTIFICATION OF DAILY PROCEEDS FROM PASSENGER TRANSPORT

The transport service provider may certify daily proceeds through the issuance of tickets containing the information required under the ministerial decree dated 30 June 1992, even if tickets are dematerialised. Such certification may be used if an invoice is not mandatory, and if the customer - instead of a receipt/tax receipt (and electronic storage and subsequent data submission pursuant to article 2 (1) of the Italian legislative decree no. 127/2015) does not request an invoice.

Transport tickets are documents that are relevant for tax purposes and that - as to the features they must possess if they are issued electronically, as well as to the modes and time of storage (see section 3, ministerial decree dated 17 June 2014) - fall within the scope of the provisions contained in the ministerial decree dated 17 June 2014. Hence, their storage may not be replaced by a summary file of the same (Italian tax authority, answer to request for advance ruling no. 98 of 23 April 2024).

VAT REFUNDS FROM THE UK

As of 2021, VAT refunds for transactions with the United Kingdom are subject to article 38-ter of the Italian DPR no. 633/1972. Hence:

- those established in Italy may file a VAT refund request to the UK, in compliance with the current UK legal provisions;
- those established in the UK may file a VAT refund request if the requirements under article 38-ter (which refers to article 38-bis2 (1) of the Italian DPR no. 633/1972) are met. The refund application must be filed according to the decision adopted by the Italian tax authority of 1 April 2010 (Italian tax authority, decision no. 2 of 2 May 2024).

SALE OF INFRASTRUCTURE WORKS

The Italian tax authority provides clarifications on the VAT rules for the sale of infrastructure works and of land required for them to be build, and to be offset against infrastructure charges (Italian tax authority, answer to request for advance ruling no. 92 of 16 April 2024).

DOWNWARD ADJUSTMENTS

If the debtor (Foundation) started a winding-up proceeding under article 14 of the provisions implementing the Italian civil code, the creditor may issue a VAT credit note (downward adjustment) once the procedure - for the unsatisfied part of the admitted claim is concluded - i.e. the liquidation balance sheet and the distribution plan are final (Italian tax authority, answer to request for advance ruling no. 88 of 8 April 2024).

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SALE OF BUSINESS

A set of the following assets does not form a business:

- the single permit for construction and operation of a photovoltaic plant,
- the availability of the surface right of certain pieces of land for the construction and the operation of the plant,
- the project for the construction, the development, and the operation of the photovoltaic plant,
- the right of connection of the photovoltaic plant to the national electricity grid,

since the sold assets are - not even potentially - able to exercise a business activity and for this purpose further technical devices (photovoltaic panels and inverters) must be set up at the purchaser's cost (Italian Supreme Court judgement no. 8805 of 3 April 2024).

The sale of:

- the twenty-five-year surface ownership right of a photovoltaic plant (plant and equipment),
- the legal relationship instrumental to the enjoyment of tax incentives and other economic benefits,

is not a sale of a business if no rights and legitimate interests arise from the agreement with the national service provider (Italian Supreme Court judgement no. 10767 of 22 April 2024).

FREE PROVISION OF HEAT

Heat produced by a VAT payer and provided to other VAT payers for free to be used for their economic activities forms a withdrawal of assets from one's own business comparable to a sale of goods for consideration. To this end, it is irrelevant whether such other VAT payers do or do not use such heat for transactions that entitle them to deduct VAT (CJEU judgement C 207/13 of 25 April 2024).