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MILLEPROROGHE DECREE

The following tax news are introduced further to the conversion into law of the *Milleproroghe* decree (law-decree no. 202/2024 converted into law no. 15 of February 2025).

TAX SETTLEMENT SCHEME (*ROTTAMAZIONE-QUATER*)

Taxpayers

- who opted for the tax settlement scheme under article 1 (235) of the Italian law no. 197/2022, and
- became forfeited as of 31 December 2024 due to the failure to pay the sums owed, or to pay them entirely or in due time, may be

readmitted if they file the relevant application by 30 April 2025.

If readmitted, taxpayers must provide for the payments of sums still owed as follows:

- one single instalment by 31 July 2025;
- no more than 10 instalments of equal amount (plus interest at 2 percent). The first two instalments will become due on 31 July 2025 and on 30 November 2025. The subsequent instalments will be payable by 28 February, by 31 May, by 31 July and by 30 November 2026 and 2027 respectively.

TAX RETURNS

The initial deadline for filing income and IRAP tax returns for the 2024 tax year is postponed to 30 April 2025.

TRANSITION 5.0 TAX CREDIT

Investments incurred even before the filing of the application for access to the tax credit are eligible, if they are made on or after 1 January 2024.

TAX CREDIT FOR "SIMPLIFIED LOGISTICS ZONES (SLZ)"

The tax credit for investments in SLZs under article 13 of the Italian law-decree no. 60/2024 is extended to investments made between 1 January 2025 and 15 November 2025.

DIRECT TAXES

WITHHOLDING TAX ON DIVIDENDS

Companies adhering to the "collaborative compliance" scheme under the Italian legislative decree no. 128/2015, as subsequently amended, may be eligible for:

- exemption from withholding tax on dividends under article 27-bis of the Italian DPR no. 600/1973 (implementing the "mother-daughter" directive),
- exemption from withholding tax on interests set forth under the bilateral agreement between the EU and Switzerland

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if upon dividend distribution or payment of interest the holding period has not yet accrued (Italian tax authority, answer to request for advance ruling no. 48 and no. 49 of 25 February 2025).

WITHHOLDING TAX EXEMPTION FOR INTEREST ON MEDIUM-LONG TERM LOANS

Withholding tax exemption for interest on medium-long term loans granted to Italian companies under article 26 (5-bis) of the Italian DPR no. 600/1973 may apply for both direct and indirect loans.

An indirect loan is characterized by the interposition of an entity which materially receives the interest and must then reverse it to a third party as the actual beneficiary of the taxable income (Italian Supreme Court judgement no. 4427 of 20 February 2025).

NEW TAX SCHEME FOR "IMPATRIATES"

For the purposes of the new "impatriates" tax scheme under article 5 of the Italian legislative decree no. 209/2023 for taxpayers, who become fiscally resident in Italy as of 2024, the minimum residence period abroad is seven tax period if there is coincidence between:

- the employer by whom she or he was employed abroad in the tax period prior to her or his return to Italy, and
- the employer for whom she or he will start working after relocation to Italy.

For this purpose, it is irrelevant that the employee interrupted the employment relationship in the meantime (starting a self-employed activity) and that therefore there is no continuity between the employment relationship carried out abroad and the one subsequently carried out in Italy (Italian tax authority, answer to request for advance ruling no. 53 of 28 February 2025).

STATUS OF EMPLOYEE COMPATIBLE WITH DIRECTOR STATUS

For income tax purposes, the status of employee of a corporation is incompatible with the office of chairman of the board of directors or of sole director, since the "powers of representation, management, control and the disciplinary powers" cannot lay with one and the same individual and make it impossible to separate the employment relationship part from the related separate

powers required for the existence of a relationship of subordination. Consequently, the related employee cost is not deductible from the company's income.

However, the compatibility of the status of employee and the status of director-shareholder or member of the board of directors of a corporation must be verified not just formally by making reference to the articles of association and to corporate resolutions, but it is necessary to actually verify whether there is a hierarchical subordination, managerial and disciplinary power and, more specifically, the performance of duties other than those typically connected to the office held (Italian Supreme court judgement no. 5218 of 28 February 2025).

TAX BENEFITS FOR "FIRST HOME" BUYERS

In the event of

- sale of a residential unit purchased less than 5 years ago by using the "first home" tax benefit, and
- subsequent purchase within one year of a building plot for the construction of a residential unit to be used as main home,

the taxpayer does not forfeit the "first home" tax benefit, not even if the land is located abroad. For this purpose, the taxpayer must provide appropriate documentation such as: notarial deed of purchase of land, construction project for the main home and relevant permits issued by the relevant local authorities, tender agreement and documentation proving habitual residence in the property purchased abroad (Italian tax authority, answer to request for advance ruling no. 29 of 12 February 2025).

EFFECTS ON PREPAYMENTS OF THE CORRECTION OF AN INCORRECT TAX RETURN

No penalties are owed on the higher amount of resulting unpaid prepayments if a supplementary tax return is filed to correct an incorrect tax return (Italian Supreme Court judgement no. 4187 of 18 February 2025).

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VAT

QUANTITATIVE DISCOUNTS

The assignment of promotional kits to customers

- provided for under the original contract terms and conditions, and
- subject to the achievement of certain purchase volumes by the customers themselves,

is an assignment by way of discount, premium or rebate excluded from VAT pursuant to article 15 no. 2 of the Italian DPR 633/1972.

Under the same conditions the same VAT treatment applies to goods assigned further to the redemption of points collected by customers upon achievement of certain purchase volumes (Italian tax authority, answer to request for advance ruling no. 25 of 11 February 2025).

PERMANENT ESTABLISHMENT

The Italian tax authority clarifies under what conditions the Italian permanent establishment of a non-resident company intervenes in the assignment of goods and the provision of services occurred in Italy (Italian tax authority, answer to request for advance ruling no. 33 of 13 February 2025).

"FREE CURRENCY" EXPORTS

A "Free currency" export is a transaction by which a VAT payer established in Italy transfers goods from Italy to a non-EU member state, without ownership being transferred and hence without consideration: therefore, the assets continue to be owned by the Italian VAT payer.

The subsequent disposal of existing assets abroad:

- if contractually agreed upon from origin vis-à-vis a certain customer (i.e. consignment stock) constitutes an export sale under article 8 of the Italian DPR 633/1972;
- otherwise, this does not constitute an "export sale" under article 8 of the Italian DPR no. 633/1972 but a transaction outside the scope of VAT under article 7-bis of the Italian DPR no. 633/1972 (Italian tax authority, answer to request for advance ruling no. 34 of 14 February 2025).

SECONDMENT OR LENDING OF PERSONNEL

Further to the ECJ judgement on Case C94/19 and the subsequent repeal of article 8 (35) of the Italian law no. 67/1988 personnel secondment or lending services are relevant for VAT purposes if there is a direct link between the personnel secondment or lending service rendered by the original employer and the payment made by the host. It is assumed that such a direct link exists if:

- the payment made by the host of the amounts invoiced by the original employer is a condition for the latter to second the employee, and
- the host provides for the payment as consideration for the secondment.

In such a case, the personnel secondment or lending is subject to VAT, regardless of the amounts paid, and therefore also if payment corresponds to the cost of the seconded personnel only and therefore even if there is no mark up (Italian tax authority, answer to request for advance ruling no. 38 of 18 February 2025).

ERRONEOUS APPLICATION OF TAX

If a supplier applies a wrong VAT rate, the purchaser or customer is entitled to deduct the tax only within the limits of the tax due and not the entire amount charged by way of recourse and paid to the supplier (Italian Supreme Court order no. 4101 of 17 February 2025).

SHELL COMPANIES

The Italian Supreme Court disapplies the rules on shell companies and confirms the right to deduct VAT if: a) the company actually carried out a business activity (irrespective of the purpose or the results) understood as to include any activity of production, marketing or provision of services to derive income from it on a stable basis; b) the company used the assets and services purchased for its taxable operations, and thus irrespective of the results of the business activities; c) the transactions do not constitute a fraud and an abuse understood also as to include the "setting up an artificial construction". VAT may be deducted (even in the absence of sales) with regard to preparatory activities (Italian Supreme Court order no. 4151 and no. 4157 of 18 February 2025).

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EXCEEDING OF TAX OFFSET LIMIT

The breach resulting from the exceeding of the annual tax offset limit continues to be subject to penalties, even if such limit is subsequently raised (Italian Supreme Court judgement no. 4556 of 20 February 2025).

ENTERPRISES

DUTY TO DISCLOSE THE DIRECTORS' CERTIFIED E-MAIL ADDRESS

The 2025 budget law introduced the duty for directors "of enterprises incorporated in corporate form" to register their certified e-mail address with the companies' register.

This duty affects both companies incorporated as of 1 January 2025 and companies incorporated before such date; for the latter the deadline for disclosure of the certified e-mail address of each director is 30 June 2025.

Subjectively, it is clarified that: *<<Therefore, the broad wording of the legal provision cannot but result in including in the group of obligated entities of all forms of companies, whether partnerships or corporations, under which a business activity can be carried out, and in excluding from it those corporate forms that are not allowed to undertake trade activities: such as simple partnerships (società semplici) ... with the sole exception of partnerships engaged in agricultural activities and mutual aid societies>>*.

For the same reasons it must be excluded that the duty applies to consortia (including those with external activities) and to consortia companies.

Instead, it is believed that business networks may be included under certain circumstances (Italian Ministry for Enterprises and Made in Italy (MIMIT), note no. 43836 of 12 March 2025).

Sincerely yours

HAGER & PARTNERS