



NEWSLETTER N. 20-2019

16 July 2019 / Page 1/4

DIRECT TAXES

TAXATION OF DIVIDENDS FROM QUALIFYING HOLDINGS

Profits from qualifying holdings gained by individuals:

- until 31 December 2017,
- and distributed from 1 January 2018,

are subject to the tax regime in force before 2018. Hence, such profits are not subject to the new provisions introduced by Italian Law 205/2017 (Italian 2018 Budget Law) or the withholding tax of 26%. The previously valid provisions apply to profit distributions both resolved upon between 1 January 2018 and 31 December 2022, as expressly provided for by the transitional rules, and resolved upon by 31 December 2017 (Italian tax authority, resolution 56 as of 6 June 2019).

The transitional rules concern not only the amount of the taxable profit but also the method of taxation. Hence, if foreign dividends are collected via a tax substitute, the tax substitute will continue to pay the withholding tax on the "exemption threshold" (Italian tax authority, resolution 56 as of 6 June 2019).

TRANSACTIONS IN FOREIGN CURRENCY

The Italian tax authority clarifies the tax aspects of the following transactions in foreign currency:

- a) monetary charge from the euro account and purchase in foreign currency: the fiscally recognized cost of the for-

ign currency corresponds to the conversion into euro at the exchange rate of the day on which the transaction is carried out; at the end of the business year, any difference between the fiscal cost and exchange rate at balance sheet date is included in taxable income;

- b) purchase of securities in foreign currency by withdrawing from a foreign currency account: the positive or negative exchange rate differences of the foreign currency accrued up to that date are taxable income (the difference between the acquisition and use of the foreign currency for the acquisition of the securities is deemed to have been realised); the fiscally recognized cost of the securities corresponds to the cost at the exchange rate on the purchase date;
- c) receipt of foreign currency dividends for securities purchased: they are converted at the exchange rate applicable at the time the profits are received; at the end of the business year, they must be converted at the spot rate, resulting in a positive or negative income component;
- d) sale of securities: positive or negative foreign exchange differences are not recorded autonomously and separately, but are included in the relevant capital gains/losses from sale;
- e) shares held at the end of the business year are recorded at the exchange rate at the time of their purchase; with regard to bonds and similar securities, the recording at the exchange rate at the end of the business year is not relevant for tax purposes (Italian tax authority, resolution 57 as of 6 June 2019).

NEWSLETTER N. 20-2019

16 July 2019 / Page 2/4

TRANSFORMATION OF A COMPANY NOT SUBJECT TO CORPORATE TAX INTO A COMPANY SUBJECT TO CORPORATE TAX AND PARTICIPATION EXEMPTION (PEX)

In the event of:

- transformation of a general partnership (SNC) into a limited liability company (SRL1),
- business branch contribution by SRL1 into a newco SRL2,
- sale of shares of SRL2 by SRL1,

the holding period pursuant to section 87 of Italian Tax Code (TUIR) for the purposes of application of the participation exemption scheme also includes the holding period prior to the corresponding transformation. However, according to the Italian tax authority, such complex transaction has aspects of tax elusiveness, since the sale of shares of SRL2 would be more advantageous for SRL1 than for SNC (answer to request for advance ruling no. 185 as of 11 June 2019, Italian tax authority).

CONSORZIO PASSING ON COSTS AND REVENUES

The Italian tax authority clarifies the VAT, corporate tax (IRES) and regional tax on productive activities (IRAP) scheme applicable to the passing on of costs and revenues incurred/generated by a Consorzio to its members and classifies such transaction as a mandate without power of representation (answer to request for advance ruling no. 188 as of 12 June 2019, Italian tax authority).

TRANSFER OF CINEMA TAX INCENTIVES

Cinema tax incentives pursuant to section 17 and 18 of Italian Law 220/2016 may be transferred within the framework of the group tax consolidation scheme (answer to request for advance ruling no. 191 as of 13 June 2019, Italian tax authority).

FLAT TAX SCHEME

The flat tax scheme does not apply if the taxpayer, at the time of notice of commencement (DIA), has already been granted remuneration of more than 65,000 Euro as a result of an enforceable judgement (answer to request for advance ruling no. 195 as of 17 June 2019, Italian tax authority).

LOSSES ON FOREIGN RECEIVABLES

Losses on expired foreign receivables are not deductible if the creditor has remained inactive and the expiration is due to the "free will" of the creditor (answer to request for advance ruling no. 196 as of 18 June 2019, Italian tax authority).

REPATRIATES

Persons not registered with the Registry of Italians Resident Abroad (AIRE) may prove their period of residence abroad on the basis of the DTA pursuant to Italian Legislative Decree 147/2015 right from 2019 (answer to request for advance ruling no. 204 as of 25 June 2019, Italian tax authority).

DE-TAXATION OF PERFORMANCE BONUSES

Concerning performance bonuses to be tax deductible, the criteria for measuring incremental objectives must be determined well in advance of the accrual of the bonuses in order to fulfil their incentive function. Such condition is not met if these criteria are identified in an agreement which was signed near the end of the relevant period for the measurement of the objectives (answer to request for advance ruling no. 205 as of 25 June 2019, Italian tax authority).

NEWSLETTER N. 20-2019

16 July 2019 / Page 3/4

VALUE ADDED TAX

TAX FREE SHOPPING

VAT credit/debit notes of tax free shopping transaction must be issued via the OTELLO 2.0 system. No cumulative VAT credit/debit notes may be issued (Italian tax authority, resolution no. 58 as of 11 June 2019).

MERGER LEVERAGE BUY-OUT AND DEDUCTION

VAT paid by the holding company on costs incurred in connection with a merger leverage buy-out for the following services:

- tax, business and legal consultancy relating to due diligence,
- consultancy on the restructuring of loans;
- assistance in contractual matters;
- building surveys,
- notarial services;

is not deductible if the holding company does not provide output services such as to constitute direct or indirect interference by the holding company in the management of the target. However, the tax relief may be claimed if the holding company does not merely hold the shares, but carries out an economic activity (answer to the request for legal advice no. 17 as of 25 June 2019, Italian tax authority).

ARTWORKS AND MARGIN SCHEME

The margin scheme applies if the reseller originally acquired the artwork without having the right of VAT deduction. However, such scheme does not apply if no VAT was applied to the original purchase (e.g. before 1972) (Italian tax authority, Principio di diritto no. 19 as of 18 June 2019).

VAT ADJUSTMENT FOLLOWING A SETTLEMENT AGREEMENT

In the event of a declaratory settlement agreement by which the purchaser undertakes to return the goods to the supplier, the supplier may not issue a VAT debit note if one year has already passed since the transaction was carried out (answer to request for advance ruling no. 178 as of 3 June 2019, Italian tax authority).

REGISTRATION FEE

BRANCH CONTRIBUTION AND SALE OF SHARES

The Italian Tax authority considers that a complex transaction concerning the:

- branch contribution relating to hotels,
- sale of shares of the acquiring company,

is not deemed abusive for registration fee purposes, as *"the tax advantage given by the difference between the flat rate registration fee applying to the two transactions and the registration fee proportionally applying to sale of shares is not undue, not contrary to the principles that govern the application of registration fee to the branch sale."* (answer to request for advance ruling no. 196 as of 18 June 2019, Italian tax authority).

TAX ASSESSMENT AND COLLECTION

CERTIFICATION OF TAX LIABILITIES

The form with the corresponding instructions for the issuance of the tax liabilities certification by the Italian tax authority has been approved in accordance with section 364 of Italian Legislative Decree 14/2019 (decision no. 224245/2019 as of 27 June 2019, Italian tax authority).

NEWSLETTER N. 20-2019

16 July 2019 / Page 4/4

INTERNATIONAL TAX LAW

MAKING VAT DIGITAL - UK

The UK Government has launched the first phase of the Making Tax Digital ("MTD") project. The British Government proposed that the new system would be rolled out over two years, first applying to income tax returns (in 2018), and then extended to VAT (in 2019) and corporation tax (in 2020). The Making Tax Digital requirements will apply to all VAT registered businesses for their VAT obligations from 1 April 2019 where their turnovers are in excess of the VAT threshold (currently £85,000). Such businesses will have to keep their records digitally and provide their VAT return information to HMRC through Making Tax Digital compatible software. However, businesses under a more complex VAT scheme will have a further six months to prepare, as HMRC has deferred the obligation until 1 October 2019. Exempt businesses fall into one of the following categories:

- VAT group or VAT division;
- traders based overseas;
- trusts;
- Non-profit organisations that are not set up as a company
- local authorities.
- public corporations.

Businesses with turnover below the VAT threshold will not be required to use the system but can choose to do so. All VAT-registered businesses in the UK with turnover above the VAT threshold are required to keep digital records and submit quarterly tax returns to HMRC using MTD-compatible software. VAT data should be kept in XML format and submitted via the API platform to HMRC. Digital records should include, for each supply, the time of supply (tax point), the value of the supply (net excluding VAT) and the rate of VAT charged. They should also include information about the business, including business name and principle business address, as well as the VAT registration number and details of any VAT accounting schemes used.

Yours sincerely,

HAGER & PARTNERS