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DIRECT TAXES

PATENT BOX

The decision specifying how to prepare adequate documentation in order to directly opt for the application of the patent box tax advantages has been released.

Such option must be exercised at the time of filing of the income tax return relating to the tax period to which the tax advantage refers to. The option is irrevocable, valid for one year and may be renewed. Adequate documentation shall allow taxpayers to benefit from the non-application of penalties in the event of adjustment of the tax advantages by the Italian tax authorities (Italian tax authority, decision prot. no. 658445 as of 30 July 2019).

TRANSFER OF INTEREST EXPENSE TO THE CONSOLIDATED FINANCIAL STATEMENTS

A consolidated company:

- which incurred a fiscal loss in the tax period or closed the financial year with balances down to 0,
- may transfer not only a possible fiscal loss of the tax period but also the share of non-deductible interest expense covered by EBIT in excess transferred by other companies participating to domestic or worldwide group taxation to the consolidated financial statements.

In such cases there is no risk that the prohibition to use fiscal losses incurred prior to group taxation is circumvented.

However, if the consolidated company achieved a positive result in the tax period, in partial derogation to the statements in newsletter 19/2009, it is assumed that the prohibition to transfer fiscal losses from previous years to domestic or worldwide group taxation is circumvented within the limits of the amount of said losses actually deducted at the time of determining the individual net result of the tax period (Italian tax authority, decision 67 as of 11 July 2019).

MLCO transactions

A merger leveraged cash out (MLCO), whereby the shareholders (individuals) of a company (target) reassess the value of participations for tax purposes and sell them to another company (vehicle) - in which one of the four selling shareholders and its two children (majority shareholders) are shareholders - and that subsequently is acquired by the target - is deemed elusive. Such a transaction would allow for a tax advantage that consists in zeroing the taxation of direct income (i.e. no reassessment and sale of equity investments) from profits by the sellers (Italian tax authority, Principio di diritto 20 as of 23 July 2019).

VALUE ADDED TAX

VAT ADJUSTMENT NOTES

VAT downward adjustment notes must not be submitted via the OTELLO 2.0 system (Italian tax authority, decision 65 as

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of 10 July 2019).

ONLINE SALES THROUGH ELECTRONIC INTERFACES

The decision specifying how to submit data concerning online sales of goods by using the electronic interface under section 13 of the Italian law decree 34/2019 has been released. To this purpose

- "online sale of goods" means the goods sold or shipped, directly or indirectly, by the supplier from an EU or non-EU country other than the target country of shipment or delivery to the purchaser's destination;
- "electronic interface" means virtual marketplaces, digital platforms, portals or similar means that are either resident or not resident in Italy;
- "persons required to report" means resident and non-resident persons in Italy that promote online sales of goods within the EU by using an electronic interface.

For the purposes of the provisions under review here, the electronic interface must take part, directly or indirectly

- in determining the general conditions under which the goods are sold
- in collecting the payment made by the purchaser;
- in the order or delivery of the goods.

However, if the interface carries out one of the following transactions only, such transactions shall be excluded from the scope of the provisions under review here:

- processing of payments relating to the sale of goods;
- collating or disclosure of goods;
- re-directing or transferring purchasers to other electronic interfaces on which goods are sold, without any further intervention in the sale.

Persons required to report must submit the following data for each calendar quarter on each supplier that carried out at least one sale in the relevant quarter to the Italian tax authority:

- a) complete name or personal data, including the place of residence or the domicile, as well as the unique identification code used for sales on electronic

- interfaces, tax identification code, if any, e-mail address;
- b) the total number of units sold in Italy;
- c) the total amount of the sales prices or - upon the VAT payers choice - the average sales price for the units sold in Italy in Euro.

Data must be submitted electronically no later than by the end of the quarter's subsequent month. Data must be submitted for the first time by 31 December 2019. To this end, non-residents without a permanent establishment in Italy must provide for direct identification or appoint a tax representative in Italy.

If no or incomplete data is submitted, persons required to report are deemed tax debtors for the online sales for which no or incomplete data was submitted.

The above duties shall be effective until 31 December 2020. The new provisions under section 11-bis (11-15) of the Italian law decree 135/2018 are effective as of 1 January 2021. Such new provisions set forth that if a VAT payer promotes online sales of mobile phones, game consoles, tablet and laptop PCs via an electronic interface

- that are imported from third territories or countries, with an intrinsic value of no more than EUR 150, it is assumed that the same VAT payer has received and sold such goods;
- that are performed in the EU by a VAT payer not established in the EU to an individual (non-VAT payer), it is assumed that the VAT payer promoting the sale has received and sold such goods (Italian tax authority, decision prot. no. 660061 as of 31 July 2019).

REGISTRATION FEES

A sentence contained in a payment order obtained by the guarantor against the principal debtor in the context of an action for indemnity relating to the "payment of sums or values" is subject to proportional registration fees at 3 percent pursuant to section 8 of the Tariff, Part I, Italian Code of Registration Fees (TUR) (Italian tax authority, decision 70 as of 30 July 2019).

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DONATION TAX

A beneficiary who was donated a business benefiting from the tax advantages under section 3 (4-ter) of the Italian legislative decree 346/1990 and that, subsequently, transfers the right of legal ownership of the business is not excluded from the tax advantages, provided that such beneficiary continues to carry out the business (Italian tax authority, decision 231 as of 12 July 2019).

- the first instalment by 30 September 2019 (no interest);
- the second instalment by 31 October 2019 (plus interest);
- the third instalment by 2 December 2019 (plus interest).

Even in this case, the above instructions remain unchanged, if the same taxpayers intend to benefit from the possibility to settle taxes with an increase. Consequently,

- the first instalment by 30 October 2019 with an increase of 0.4 percent (no interest);
- the second instalment by 31 October 0.4 with an increase of 0.4 percent (no interest);
- the third instalment by 2 December with an increase of 0.4 percent (plus interest) (Italian tax office, decision no 71 as of 1 August 2019).

TAX COLLECTION

Further to the extension of the tax settlement deadlines contained in the Italian Growth Decree, the Italian tax authority has clarified such tax settlement deadlines:

1. if the tax is settled in one single instalment, all taxpayers that benefited from the extension - be they VAT payers or not must settle taxes:
 - by 30 September 2019;
 - by 30 October 2019 with an increase of 0.4 percent.

2. if tax is settled in several instalments:

2.1 VAT payers must settle:

- the first instalment by 30 September 2019 (no interest);
- the second instalment by 16 October 2019 (plus interest);
- the third instalment by 18 November 2019 (plus interest).

If the same taxpayers intend to benefit from the advantage under section 17(2) of the Italian DPR 435/1 (tax settlement with increase), they must settle:

- the first instalment by 30 October 2019 with an increase of 0.40 percent (no interest);
- the second instalment by 18 November 2019 with an increase of 0.40 percent (plus interest).

2.2 Non-VAT payers that hold a participation in companies, associations of undertakings and enterprises under section 5, section 115 and section 116 of the Italian Tax Code (TUIR) must settle:

Yours sincerely,

HAGER & PARTNERS