



NEWSLETTER NO. 36 - 2020

12 November 2020 Page 1/4

DIRECT TAXES

DEDUCTIBILITY OF SOCIAL SECURITY CONTRIBUTIONS FROM SELF-EMPLOYMENT INCOME

The mandatory social security contributions paid by Notaries Public to the Italian Notaries' Fund are deductible for the purposes of determining self-employment income pursuant to section 54 (1) of Italian Tax Code (TUIR) and, hence, for IRAP taxable base calculation purposes (Italian tax authority, decision no. 66 as of 12 October 2020).

PROFITS DISTRIBUTED BY AN ANSTALT

The *Anstalt* is referable to non-resident bodies pursuant to section 73 (1)(d) of Italian Tax Code (TUIR). Hence, if sums distributed by an *Anstalt* to resident individuals are commensurate to the earning results of the body, those sums are considered dividends. The tax credit pursuant to section 165 of Italian Tax Code does not apply, if the income is subject to withholding tax or substitute tax or if the taxpayer himself levies the substitute tax upon filing the tax return pursuant to section 18 of Italian Tax Code (Italian tax authority, answer to request for advance ruling no. 433 as of 2 October 2020).

TERMINATION BENEFITS FOR EMPLOYEES, REDUNDANCY INCENTIVES AND NON-COMPETE FEE

Sums paid to a non-resident as termination benefits, redundancy incentives and non-compete fee are referable to section 15 of the double taxation agreement (DTA). Hence, such sums:

- are also subject to taxation in Italy limited to the amount referring to the period in which the employee worked in Italy;
- are not subject to taxation in Italy limited to the amount referring to the period in which the employee worked abroad (Italian tax authority, answer to request for advance ruling no. 460 as of 9 October 2020).

TAX SCHEME FOR PRIVATE PENSION PLANS IN SWITZERLAND ("3RD PILLAR")

The amounts paid to a resident by a private pension plan in Switzerland ("3rd pillar") are considered as pension subject to taxation pursuant to section 49 (2) (a) of Italian Tax Code (Italian tax authority, answer to request for advance ruling no. 471 as of 14 October 2020).

NEWSLETTER NO. 36 - 2020

12 November 2020 Page 2/4

VAT

MEDIATION SERVICES

Regarding the material scope of application, the VAT exemption scheme pursuant to section 10 (1)(9) of DPR 633/1972 applies to "mandate, mediation and brokerage services relating to the transactions referred to in no. 1 to 7", if the mediator acts impartially and has no personal interest in the sales agreement (Italian tax authority, answer to request for advance ruling no. 437 as of 5 October 2020).

OTHER INDIRECT TAXES

SUBSTITUTE TAX REFUND

In case of incorrect application of substitute tax on loans pursuant to section 15 of DPR 601/1973, the bank that granted the loan is entitled to claim refund and not the borrower (Italian tax authority, answer to request for advance ruling no. 462 as of 12 October 2020).

TOBIN TAX

The Tobin Tax pursuant to section 1 (491 ss.) of Law 228/2012 does not apply in case of endorsement of shares following a transfer imposed by a ruling in order to reinstate the situation prior to the sales agreement declared ineffective (Italian tax authority, answer to request for advance ruling no. 463 as of 12 October 2020).

TAX BENEFITS

TAX CREDIT FOR RENTAL LEASES OF NON-RESIDENTIAL PROPERTY

Both the main lessee and the sublessor may benefit from the tax credit for rental leases of non-residential property pursuant to section 28 of Decree-Law 34/2020 if the requirements are met (Italian tax authority, decision no. 68 as of 20 October 2020).

The tax credit for rental leases of non-residential property and business lease rentals pursuant to section 28 of Decree-Law 34/2020 is also granted if such rental leases are paid in advance in 2019 (Italian tax authority, answer to request for advance ruling no. 440 as of 5 October 2020).

In case of takeover of a business lease agreement, the loss in turnover is calculated by the lessee by comparing the turnover of each of the months of possible use of the tax credit with the turnover of the leased business referring to the same period of the previous year, even if in that period the business was run by the lessor himself (Italian tax authority, answer to request for advance ruling no. 442 as of 5 October 2020).

TAX DEDUCTION FOR EARTHQUAKE-RESISTANT CONSTRUCTION - LATE SWORN CERTIFICATION

Purchasers of real estate units located in the earthquake zones subject to earthquake-resistant construction whose authorisation procedures began after 1 January 2017 and before 1 May 2019 (date on which the new provisions came into force) may benefit from the tax deduction pursuant to section 16 (1-septies) of Decree-Law 63/2013 and sell it in the form of a tax credit, even if the sworn certification pursuant to section 3 of Ministerial Decree 58/2017 was not submitted upon filing of the building license application. However, businesses must submit the above sworn certification by the date of conclusion of the notary deed (Italian tax authority, answer to request for advance ruling no. 442 as of 1 October 2020).

SALE OF TAX CREDIT FOR ENERGY-EFFICIENCY IMPROVEMENTS

Pursuant to the provisions on the tax deduction for energy-efficiency improvements, "in case of different suppliers, the transferable tax credit is commensurate to the total amount of expenses paid in the tax period to each supplier". If the tax credit is sold to different suppliers, its maximum amount is in any case commensurate to the expenses incurred in the tax period. However, this does not affect any

NEWSLETTER NO. 36 - 2020

12 November 2020 Page 3/4

sale of such tax credit to the single suppliers (potential buyers) on the basis of the value of the goods sold and services supplied. Hence, each supplier may acquire the entire tax deduction amount granted to the seller for energy-efficiency improvements, taking into account that it is irrelevant that part of the tax credit acquired relates to energy-efficiency improvements carried out by other suppliers who have waived the tax credit (Italian tax authority, answer to request for advance ruling no. 425 as of 1 October 2020).

CONTRIBUTIONS TO LOSSES

In case of business leases, the loss in turnover must be assessed also with reference to the turnover referring to the business under the lease agreement.

Hence:

- the assignee of the business lease agreement must compare the data of the two reference periods (April 2020 - April 2019) in order to calculate the loss in turnover, taking into account not only the own turnover, but also the turnover of the transferred business in the reference periods;
- the assignor of the business lease agreement must compare the data of the two reference periods (April 2020 - April 2019) in order to calculate the loss in turnover, deducting the amounts referring to the transferred business from his own turnover (Italian tax authority, answer to request for advance ruling no. 426 as of 2 October 2020).

The contributions to losses are not granted to those companies that have initiated liquidation before 31 January 2020 (Italian tax authority, answer to request for advance ruling no. 479 as of 19 October 2020).

The contributions to losses are granted to companies that meet the relevant conditions, even if they were established on 30 April 2020 with concurrent activation of the VAT number and registration with the Companies register in May 2020 (Italian tax authority, answer to request for advance ruling no. 476 as of 16 October 2020).

TAX CREDIT FOR CAPITAL GOODS INVESTMENTS

The tax credit for capital goods investments pursuant to section 1 (185-197) of Law 160/2019 is granted, if said reference to legal provision is stated on the invoice. Failure to do so may otherwise be regularised by the purchaser as follows:

- in case of paper invoices, the purchaser may specify the above reference to legal provision on the original of each invoice (partial bill or settlement bill) in a indelible manner, also using a special stamp.
- in case of e-invoices, the purchaser may:
 - print the invoice by specifying the indelible reference to legal provision;
 - draw up a supplement in electronic form to be attached to the original invoice and stored together with the original invoice in the manner set out in the newsletter 14/2019 of the Italian tax authority in terms of reverse charge scheme. As specified in the newsletter 13/2018 of the Italian tax authority, in case of e-invoices submitted via the Sdl platform, given that such invoices are unchangeable, the purchaser/client may waive the printing of the invoice and create another document to be attached to the file of said invoice containing both the data necessary for the supplement and the billing data. This document will then be submitted to the Sdl platform, in order to reduce the accessing and storage fee (Italian tax authority, answer to request for advance ruling no. 438 and 439 as of 5 October 2020).

TAX DEDUCTION FOR ARTS AND CULTURE

Foundations of public law may benefit from the tax deduction for arts and culture pursuant to section 1 Decree-Law 83/2014 in consideration of (i) the management of public cultural heritage, (ii) public funding (although not exclusively, but in addition to other private funding), (iii) the subjection to public law regulatory scheme (Italian tax authority, answer to request for advance ruling no. 452 and 453 as of 7 October 2020).

NEWSLETTER NO. 36 - 2020

12 November 2020 Page 4/4

CORONAVIRUS AND LOCKDOWN: REDUCED RENTAL LEASES FOR RESTAURATEURS UNTIL MARCH 2021

Pursuant to a ruling of Court of Rome as of 27 August 2020, restaurant operators/restaurateurs may benefit from reduced rental leases not only for April and May 2020, but also for the period from June 2020 to March 2021.

The Court of Rome deemed relevant not only the economic challenges caused by the health emergency, but also the lack of flexibility shown by the property owners in terms of renegotiating the contractual terms following the contingent liabilities linked to the pandemic outbreak, in breach of the negotiation duty deriving from the principle of good faith and solidarity.

Yours sincerely,

HAGER & PARTNERS