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TAX COLLECTION

POSTPONEMENT OF TAX PAYMENT DEADLINES

The deadline as of 30 June 2021 for the payment of taxes resulting from income tax, IRAP and VAT tax returns of taxpayers, for which tax liability parameters (ISA) have been released and with proceeds or income not exceeding the limit established for each parameter by the relevant decree released by the Italian Ministry of Economics and Finance (MEF), is postponed to 15 September 2021 without any surcharge. This extension was approved in the bill converting the Decree-Law 73/2021 (so-called "Support-bis") and is awaiting publication in the Official Gazette.

This extension will exceed the previous extension of payments to 20 July 2021 (DPCM 28 June 2021, Official Gazette no. 154 of 30 June 2021).

Such postponement applies not only to taxpayers applying tax liability parameters (ISA) and to taxpayers with grounds for exclusion from such parameters, but also to minimal and flat tax taxpayers as well as taxpayers that are shareholders of companies pursuant to section 5, 115 and 116 of Italian Tax Code complying with the above requirements.

DIRECT TAXES

SUPERBONUS 110%: LINKED SECONDARY WORKS

Regarding the so-called "Superbonus" pursuant to section 119 Decree-Law 34/2020, works aimed at eliminating architectural barriers may be considered "linked secondary works" even if they are carried out along with "leading" seismic improvement works and not only along with "leading" energy efficiency works.

Moreover, except for demolition and reconstruction works of buildings, the works referred to in section 119 of Decree-Law 34/2020 are considered extraordinary maintenance works and may be carried out by means of a certified notice of commencement of work (CILA).

Pursuant to section 119 Decree-Law 34/2020, the tax benefit is considered lost in case of: i) failure to submit the above notice (CILA); ii) works carried out not in accordance with the above notice (CILA); iii) failure to certify the data referred to the point above and iv) inexactness of the certifications. Submission of the above notice (CILA) does not require certification of compliance of the property (section 33 of Decree-Law 77 as of 31 May 2021).

SUPERBONUS 110%: NON-PROFIT ORGANISATIONS

Non-profit organisations may benefit from the Superbonus 110% pursuant to section 119 of Decree-Law 34/2020,

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regardless of the building register category and the use of the property subject to works. The above applies without prejudice to the exclusion of works carried out on property units in categories A/1, A/8 and A/9 and compliance with the other conditions provided for by law.

Moreover, the "type" of property and the "type of work" to be carried out shall be taken into account in order to determine the maximum amount eligible for deduction. However, it is not relevant whether the building is part of a condominium or not (Italian tax authority, answer to request for advance ruling no. 448 as of 25 June 2021).

SUPERBONUS 110%: COOPERATIVE WITH JOINT PROPERTY OWNERSHIP

Cooperatives managing properties through a property management condominium pursuant to section 201 et seq. of Law 1165/38 may benefit from the Superbonus 110% pursuant to section 119 of Decree-Law 34/2020, if the condominium is incorporated according to Italian Civil Code.

Moreover, the Superbonus 110% also applies if a property is wholly owned by a cooperative with joint property ownership and the property units are assigned to the members, provided that the expenditure and deduction limits set for each of the two types of works are respected.

If some of the property units owned by the cooperative are leased to third parties, the following applies:

- for leading works, the Superbonus 110% only applies if the total area of the property units assigned to the members exceeds 50%;
- for linked secondary works the above tax benefit applies only to property units assigned to members and not also to those leased to third parties that are not members.

The possibility of exercising the options under section 121 of Decree-Law 34/2020 remains unchanged (Italian tax authority, answer to request for advance ruling no. 430 and 431 as of 23 June 2021).

CONTRIBUTIONS TO LOSSES UNDER THE "SOSTEGNI-BIS DECREE"

The Italian tax authority has published a provision defining the content, methods and terms of filing the request for the contributions to losses pursuant to section 1(5-15) of Decree-Law 73/2021 (so-called "Sostegni-bis Decree") (decision no. 175776 as of 2 July 2021).

CONTRIBUTIONS TO LOSSES UNDER THE "SOSTEGNI DECREE"

The Italian tax authority has published several answers to requests for advance ruling concerning contributions to losses under the Sostegni Decree (Italian tax authority, answer to request for advance ruling no. 438-445 as of 30 June 2021).

FREE EVALUATION OF HOTEL BUSINESS ASSETS

According to the Italian tax authority, the free evaluation of hotel business assets does not apply to a holding company of a hotel group that leases hotels to its subsidiaries that directly carry out the hotel business (Italian tax authority, answer to request for advance ruling no. 450 as of 30 June 2021).

INCOME TAX DEDUCTIONS AND TAX ALLOWANCES

The Italian tax authority provides clarifications on expenses entitling to income tax deductions, tax allowances, tax benefits (including the Superbonus 100%) and other important elements for the individuals' tax return and the tax compliance certification for the tax year 2020 (Italian tax authority, newsletter no. 7 as of 25 June 2021).

FOREIGN SUBSTITUTE TAX

Foreign businesses are only required to fulfil the substitute tax obligations if they have a permanent establishment in Italy.

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According to the Italian tax authority, in case of failure to pay withholding taxes by the permanent establishment, the 20% penalty pursuant to section 14 of legislative decree 471/1997 as well as the 30% penalty pursuant to section 13 of legislative decree 471/1997 apply (actually, the 30% penalty should no longer apply following the amendments introduced with legislative decree 158/2015); However, in this regard, the illustrative report to legislative decree 158/2015 has clarified that following the amendment of section 14 of legislative decree 471/1997 *"compared to the previous wording, reference is no longer made to the provisions of section 13 in case of failure to pay. According to that provision, in case of assessment of unlevied or unpaid taxes, the taxpayer may not be subject to penalties for failure to pay"* (Italian tax authority, answer to request for advance ruling no. 449 as of 25 June 2021).

GOODWILL DEDUCTION IN CASE OF TERMINATION OF BUSINESS ACTIVITY

In case of termination of business activity, the contingent liability deriving from the elimination of the goodwill is deductible for tax purposes within the limits of the non depreciated fiscal cost pursuant to section 101 (4) of Italian Tax Code (TUIR) (Italian Tax Authority, answer to request for advance ruling no. 429 as of 23 June 2021).

VAT

PERMANENT ESTABLISHMENT

For VAT purposes, a property leased in a Member State does not constitute a "permanent establishment" pursuant to section 43, 44 and 45 of Directive 2006/112/EC, if the property owner has no human resources for the execution of leasing services (EU Court of Justice, case no. C-931/19 as of 4 June 2021).

PROPERTY COMPLETION

If the notice of completion shows that part of the property is still to be completed, for the date of completion of the

construction or the construction work reference shall be made to the date of the subsequent occupancy permit (Supreme Court ruling no. 15850 as of 8 June 2021).

PRINCIPLE OF VAT NEUTRALITY EVEN IN CASE OF TAX EVASION

The VAT Directive 2006/112/EC shall be interpreted as follows: If a taxable person carrying out a transaction evades tax - without issuing an invoice and without indicating the transaction in the return - the amounts paid and received in connection with the transaction shall, in the event of assessment, be considered as amounts inclusive of VAT. The above applies unless, according to Italian tax law, the taxable person has the possibility of recovering the VAT from the purchaser who subsequently deducts VAT (Court of Justice, case no. C-521/19 as of 1 July 2021).

CASE LAW

SETTLEMENT OF TAX DISPUTES

The payment notice pursuant to section 36-bis DPR no. 600/1973 may be settled pursuant to section 6 of Decree-Law 119/2018 if it is the first and only measure taken by the Tax Authority to enforce its tax claim (Supreme Court, joint divisions, ruling no. 18298 as of 25 June 2021).

RECTIFICATION OF INVENTORIES IN CASE OF ASSESSMENT

In case of rectification of the value of ending inventories for a financial year, the tax authority shall automatically adjust and re-assess the tax return for the following year, without any further action of the taxpayer and irrespective of a specific assessment concerning that tax period.

However, according to Supreme Court, the opposite is not true.

In other words: In case of a rectification of the value of initial inventories for a financial year, the tax authority is

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not required to rectify the value of ending inventories of the preceding year (Supreme court ruling no. 17312 as of 17 June 2021; also see Supreme court ruling no. 16691 as of 14 June 2021).

BUSINESS TRANSFEREE'S LIABILITY

The transferee is jointly and severally liable with the transferor for the payables of the acquired business branch, if he has not requested the certificate pursuant to section 14 of Legislative Decree 472/1997. However, the transferee's liability shall be based on the fact that the liability is related to the acquired property. Hence, the joint and several liability of the transferee does not apply to payables attributable to another branch owned by the transferor. The transferee shall prove that the payables do not relate to the acquired business branch (Supreme court ruling no. 18117 as of 24 June 2021).

LOSSES ON RECEIVABLES TOWARDS CREDITORS UNDER INSOLVENCY PROCEEDINGS

Regarding losses on receivables the following applies: If the debtor is subject to insolvency proceedings (e.g. in case of bankruptcy), losses on receivables may be deducted under section 101 (5) of Italian Tax Code (TUIR) (to be interpreted in the light of the subsequent paragraph 5-bis, introduced by the so-called "Internationalisation Decree") also with reference to years prior to 2015, in the period of record in the balance sheet, between the year of the judgment declaring bankruptcy and the tax period in which the receivables would have been deleted from the balance sheet according to the Italian accounting principles (Supreme court ruling no. 15218 as of 1 June 2021).

Yours sincerely,

HAGER & PARTNERS



TAX ADVISORS LAWYERS CHARTERED ACCOUNTANTS

I - 20122 MILANO . Via Borgogna 2 . Tel. 02 7780711 . Fax 02 778071233 . info.mi@hager-partners.it

I - 39100 BOZEN/BOLZANO . Musterplatz 2 P.zza della Mostra . Tel. 0471 971197 . Fax 0471 980202 . info@hager-partners.it

I - 00186 ROMA . P.zza della Rotonda 2 . Tel. 06 68805843 . Fax 06 68211765 . info@hager-partners.it

www.hager-partners.it