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DIRECT TAXES

EXEMPTION SCHEME FOR DIVIDENDS

The withholding tax exemption for dividends distributed to Swiss companies pursuant to Article 9 of the bilateral agreement between the EU and Switzerland requires, among other conditions, that the (Swiss) parent company directly holds at least 25% of the capital of the (Italian) subsidiary for a minimum period of two years. In general, if the two-year holding period is not over yet at the time the dividend payment is carried out, the exemption scheme is not directly applicable by the withholding agent. However, the exemption is directly applicable. The payment deadline for taxes due between 30 June and 31 August according to income tax, VAT and IRAP tax returns for taxpayers applying tax liability parameters (ISA), minimum and flat tax payers has been extended to 15 September 2021 without any increase (see July newsletter).

WITHHOLDING TAX ON INTEREST ON MEDIUM-TERM AND LONG-TERM FINANCING

It is not allowed to adopt a look-through approach in order to verify the applicability to a certain case of the exemption scheme from withholding tax of interest on medium/long-term financings granted to Italian companies pursuant to Article 26 paragraph 5-bis DPR 600/1973. Consequently, the exemption scheme does not apply to beneficiaries of

interest that are not also direct recipients of the interest (Italian tax authority, answer to ruling application no. 569 as of 30 August 2021).

INTERCOMPANY TRANSFER OF IRES SURPLUSES

The intercompany transfer (pursuant to Article 43-ter of DPR 602/1973) of IRES surpluses relating to a merged company may be carried out by the absorbing parent company in favour of another subsidiary, even if the merger takes place:

- after the end of the tax period to which the surplus to be transferred is attributable, and
- before the merged company's tax return is filed (Italian tax authority, answer to ruling application no. 542 as of 6 August 2021).

CONTRIBUTION OF CONTROLLING OR ASSOCIATED SHAREHOLDINGS

In case of a contribution of controlling or associated shareholdings in which all requirements of applicability pursuant to Article 175 and Article 177 of the Italian tax code (TUIR) are met, Article 175 TUIR is applied. According to the Italian tax authority, Article 175 TUIR prevails over Article 177 TUIR, as the former specifies the amount of the transferable shareholdings which is necessary for the rule to be applied (in fact, they have to be controlling or

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associated shareholdings), whereas, in Article 177 TUIR, such amount cannot be determined in an abstract way, as it depends on the amount of shareholdings that might already be held by the beneficiary (Italian tax authority, answer to ruling application no. 5552 as of 25 August 2021).

TAX BONUSES

The Italian accounting standards setter OIC (Organismo Italiano di Contabilità) has defined accounting criteria regarding:

- the right of tax deduction within the financial statements of the Client;
- the discount on the invoice within the financial statements of the Contractor;
- the transfer of receivables within the financial statements of the transferor;
- the receipt of receivables within the financial statements of the transferee.

With regard to the right of tax deduction within the financial statements of the Client, the OIC clarifies, that such tax deduction must be recorded in the accounts as an investment grant (Organismo Italiano di Contabilità, notice on accounting methods for tax bonuses as of 3 August 2021).

TAX DEDUCTION FOR SEISMIC HAZARD IMPROVEMENTS

The 18-month term within which companies have to sell property units in order for purchasers to benefit from tax deduction for purchases of earthquake resistant property (so called "sismabonus acquisti" pursuant to Article 16, paragraph 1-septies Decree Law 63/2013) is extended from 18 to 30 months (Article 119 paragraph 10-quater Decree Law 34/2020, inserted by Article 33-bis paragraph 1 letter c) Decree Law 77/2021 converted).

SUPERBONUS

If the seismic hazard statement is filed after the submission of a building license application, no right to

benefit from the Superbonus accrues, unless a variation to the building license has been submitted so that the starting date of the authorization procedure can be considered a different and subsequent one (with respect to the original building license) (Italian tax authority, answer to ruling application no. 554 as of 25 August 2021).

For the purposes of the Superbonus, the category of the building before demolition and reconstruction is not relevant. It is however necessary that, after works have been concluded, the property will be a residential building and will be consequently registered under one of the cadastral categories eligible for said tax credit.

The purchaser can opt for a (partial) transfer of the amount corresponding to the tax credit in favour of the construction company, which can deduct such amount from the purchase price.

If demolition and reconstruction works are carried out within one reconstruction project, tax credit for energy efficiency (so called "ecobonus") pursuant to Article 14 Decree Law 63/2013, which is due to the construction company, is compatible with tax credit for the purchase of earthquake resistant buildings (so called "sismabonus acquisti") pursuant to Article 16 paragraph 1-septies Decree Law 63/2013, which is due to the purchasers of property units. The tax benefit pursuant to Article 16 paragraph 1-septies Decree Law 63/2013 is calculated based on the purchase price of the single property unit according to the purchase agreement, and not based on the expenses incurred by the company in relation to the subsidised works (Italian tax authority, answer to ruling application no. 555 as of 25 August 2021).

The lack of heating in the building on which reconstruction works are supposed to be carried out is a preclusive condition for the eligibility of energy efficiency works according to the regulations for ecobonus and superbonus (Italian tax authority, answer to ruling application no. 557 as of 25 August 2021).

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PENSION FUNDS

Pension funds subject to imposta sostitutiva instead of income tax may benefit from tax credit for energy efficiency ("ecobonus"), for seismic hazard improvements ("sismabonus") and for facade renovations ("bonus facciate") through the alternative methods of "transfer of tax credit" or "discount on consideration" pursuant to Article 121 of Decree Law 34/2020 (Italian tax authority, answer to ruling application no. 561 as of 26 August 2021).

PENALTIES FOR UNDUE TAX CREDIT R&D

With regard to the penalties imposed by the provisions on tax credit for R&D activities, in the absence of specific documentation problems and where the issue essentially relates to the verification of the novelty and originality of the activities carried out, as highlighted by the Italian ministry of economic development, it is appropriate to assess the applicability of the exemption of "objective conditions of uncertainty" (Please note: In the light of such clarification, the applicable penalty should be the one provided in case of undue tax credit and not the one provided in case of non-existent tax credit) (Response to parliamentary questioning no. 3-02610 as of 5 August 2021).

CODE OF BUSINESSES UNDER DISTRESS

The entry in force of the Code of businesses under distress (Italian legislative decree 14/2019) is postponed to 16 May 2022, whereas alert and assisted settlement procedures are postponed to 31 December 2023 (Decree Law no. 118 as of 24 August 2021).

VAT

VAT DEBIT NOTES

In the presence of an express termination clause, as a result of which a transaction for which an invoice has been issued no longer exists as a whole or in part, the supplier

may issue a debit note pursuant to Article 26 paragraph 2 DPR 633/1972. This is the case even in the presence of a legal challenge of the conditions for activation of aforesaid express termination clause, without a formal act of ascertainment (negotiation or judicial) of the occurrence of the aforesaid termination cause being necessary (Italian tax authority, Principio di diritto no. 11 as of 6 August 2021).

PRICE ADJUSTMENT CLAUSES

If the parties agree to determine a provisional price which will then be subject to a subsequent adjustment based on the profits made by both parties, the amounts paid at the end constitute an increase or decrease of the taxable amount for VAT purposes (Italian tax authority, answer to ruling application no. 529 as of 6 August 2021).

DEFINITION OF "TRANSPORT" FOR VAT PURPOSES

The definition of "transport of persons" must be based on the definition of the contract pursuant to Article 1678 et seq. of the Italian Civil Code, whereby a carrier undertakes to transfer persons or things from one place to another for a fee. VAT provisions for the transport of persons – exemption or taxation at a 5% or 10% rate – apply only if:

(i) the services carried out meet the criteria of said definition of transport and

(ii) the service is a "mere transport", since the company is exclusively obliged to and correspondingly remunerated for the transport of persons, without carrying out further or additional services.

However, if the obligation undertaken concerns the performance of a different and more articulated service, including the offer of different and additional services with tourist and recreational purposes, in respect to which the transport of persons appears merely instrumental, it cannot be considered to be a real and proper transport service but a "complex service" (Italian tax authority, answer to ruling application no. 530 as of 6 August 2021).

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TRANSFER OF TRADEMARKS

The transfer of trade marks registered with UIBM (Italian authority for patents and trademarks) in the course of a relocation of an existing company abroad:

- is not considered an integral part of the transfer of a business outside the scope of VAT pursuant to Article 2 paragraph 3 letter b) DPR 633/1972, since the company is located abroad and not in Italy;
- is considered an autonomous provision of services pursuant to Article 3 paragraph 2 no. 2 DPR 633/1972 (Italian tax authority, answer to ruling application no. 536 as of 6 August 2021).

PROVISION OF SERVICES REGARDING IMMOVABLE PROPERTY

Services regarding the restoring and maintenance of a railway network located in the Italian territory, provided by a non-resident taxpayer to an Italian VAT taxpayer, are subject to VAT in Italy through the reverse charge mechanism, regardless of whether the foreign supplier is registered for VAT in Italy (Italian tax authority, answer to ruling application no. 549 as of 19 August 2021).

VAT DEDUCTION ON PREPAYMENTS

The right to deduct VAT which was paid in the course of a prepayment for the conclusion of a preliminary purchase agreement for immovable property is not available if the transfer is not subsequently carried out and the transaction turns out to be fictitious (Court of Cassation, ruling no. 22092 of 3 August 2021).

REGISTRATION FEES

TAX BENEFITS FOR "FIRST HOME"-BUYERS

Tax benefits for "first homes" are not available for appurtenances which at the time of purchase are registered under category D/10 - buildings for productive

functions related to agricultural activities - as the rule only benefits appurtenances classified or classifiable under categories C/2, C6 and C/7 at the time of conclusion of the purchase agreement (Italian tax authority, answer to ruling application no. 566 as of 26 August 2021).

INHERITANCE AND DONATION TAX

EXEMPTION SCHEME FOR TRANSFERS OF CONTROLLING SHAREHOLDINGS

Transfers of controlling shareholdings of the company may benefit from the exemption pursuant to Article 3 paragraph 4-ter TUS (Italian Inheritance Act), if the beneficiary of the donation continues to hold control of the family business, even if indirectly. Therefore, the donation of 100% of a pure holding company which exclusively holds a non-controlling shareholding (i.e. of 40%) of an operating company to a direct descendant does not benefit from the exemption (Italian tax authority, answer to ruling application no. 552 as of 25 August 2021).

ALLOWANCE

Transfers of shareholdings exempt from tax pursuant to Article 3 paragraph 4-ter TUS (Italian Inheritance Act) do not reduce the allowance (Italian tax authority, answer to ruling application no. 571 as of 30 August 2021).

Yours sincerely,

HAGER & PARTNERS