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Direct Tax

Judgment no. 39 of 16 March 2021

The Constitutional Court, with judgment no. 39 of 16 March 2021, has again returned to pronounce, not far from judgment no. 158/2020, on the constitutional legitimacy of Article 20 of Presidential Decree no. 131/1986, reformulated by the 2018 Budget Law and retroactive by the 2019 Budget Law.

It should be recalled that Article 20 of the Law on Registration Tax (Testo unico sull'imposta di registro - TUR), as currently in force, provides that registration tax is applied according to the intrinsic nature and legal effects of the individual act submitted for registration, *"on the basis of the elements inferred from the act itself, regardless of the extratextual ones and the acts related to it",* except for reference to the rule on abuse of law set out in Article 10-*bis* of Law no. 212/2020.

The Italian Constitutional Court, in its decision of 16 March 2010, declared manifestly unfounded the question of the constitutional legitimacy of the reformed Article 20 of the Law on Registration Tax (confirming what was established by judgment no. 158/2020) and unfounded the question of the legality of the rule that declared it "*rule of authentic interpretation*", establishing its retroactivity.

DAC 6 | Circular letter no. 2/E dated 10 February 2021

In line with the outcome of the public consultation started on 28 December, 2020 and concluded on 15 January, the Revenue Agency issued the Circular letter no. 2/E dated 10 February 2021, containing clarifications on the cross-border arrangements subject to the mandatory disclosure rules set out in legislative decree no. 100 of July 30, 2020 and in ministerial decree of Novembre 17, 2020 implementing Directive no. 2018/822/EU (DAC 6) in the Italian law system.

The Circular letter illustrates the content of the regulation concerning the reporting obligations addressed to intermediaries and taxpayers. In particular it moves from a number of definitions to focus, among other items, on the subjective and objective aspects of the regulation (including the so-called Main Benefit Test), the exemptions and the single hallmarks.

In particular as to the MBT, the Circular letter holds that the tax benefit has to be obtained by a taxpayer meeting at least one linking criterion regarding Italy and that, for the purposes of the calculation of the tax saving obtained in Italy through the cross-border arrangement, it is necessary to take into account also taxes due either in other EU member States or in extra EU States covered by an exchange of information Treaty.

With regard to the non tax benefit to be considered for the purposes of the MBT, it has been clarified that same must be calculated on the basis of objective criteria supported by documentary evidence, as real impact in terms of costs reduction or increase of expected revenues and must be meant like that which, on the basis of the available documentary evidence, it is reasonably expected by the arrangement.

Last, as to the penalties, the Circular letter confirms that they are not applied as to the communications made within February 28, 2021 even if the deadline was expired earlier.

Ruling no. 129 dated March 2, 2021

In the ruling no. 129 dated March 2, 2021 the Revenue Agency has dealt with the carrying forward of both tax losses and tax assets (ACE and interest) in case of a demerger. The Agency has stated that such items, although originated with respect to a specific portion of businesses, are general subjective positions so that, in case of a demerger, a proportional criterion always applies to the recipient

companies (and to same demerged company in case of a partial demerger) on the basis of the respective portions of the net equity transferred or left over.

Anti-abuse rules in hypothesis of demerger Italian Tax Authority - advance tax ruling n. 78, February 2nd,2021

In the sequence of operations implemented in order to transfer a company to a potential purchaser, abuse of law occurs when an unnecessary number of transactions, whose completion is not consistent with market logic, are performed.

The facts represented by the taxpayer regards a restructuring operation aimed at selling the shareholding in the company TETA SRL held directly by BETA (in turn controlled by a family trust resident in Italy).

To achieve the aim of transferring TETA Srl to the potential buyer, the following operations have been carried out:

- Partial proportional demerger of BETA in favor of the newly incorporated company "TETA TRE" (which is participated by the Trust). As a result of the demerger, part of BETA's debt owed to the Trust ("the Credit") and BETA' s 90% shareholdings in TETA Srl were assigned to the beneficiary TETA TRE;
- Partial waiver of the Credit in favor of TETA TRE by the Trust (as shareholder of the beneficiary TETA TRE), in order to capitalize TETA TRE and increase the value of the investment in it by the Trust;
- Purchase by TETA TRE of the minority shares in TETA Srl;
- Disposal of the 100% shares in TETA TRE by the Trust to the transferee.

The disposal of the shareholding following the increase in the tax cost of the participation in TETA TRE resulting from the waiver of the Credit, allows to decrease the taxable base of the capital gain (compared to the case of direct sale by BETA).

Therefore, based on the clarifications made by the Italian Tax Authority, the waiver of the Credit seems to be aimed exclusively at reducing the tax burden of the transaction. By means of these transactions the settlers of the Trust have created the conditions for reducing the taxable base of the capital gain in order to obtain a tax advantage.

According to the Italian Tax Authority, the tax advantage is to be considered undue in view of the fact that it was obtained in avoidance of the tax provisions relating to the determination of capital gains, pursuant to artt. 86 and 87 of the Income Tax Code, as well as the discipline of waivers of receivables claimed by shareholders.

In this regard, in order avoid an abuse of law, the demerger should have been structured as a corporate reorganization aimed at the effective prosecution of the business activity by each involved company.

Anti-abuse rules in hypothesis of demerger Italian Tax Authority - advance tax ruling n. 89, February 8th, 2021

The partial proportional demerger of certain current securities in favor of a beneficiary company is allowed. Whereas the subsequent purchase of treasury shares ("azioni proprie") of the same company from its minority shareholders is considered an abuse of law since it is aimed at exploiting the lower tax burden of the non-standard termination ("recesso atipico") due to the tax step-up of the shareholding.

The facts represented by the taxpayer are related to a restructuring operation planned to optimize the financial activities of the business and to consolidate the entire ownership of the shares in a sole family composed of the spouses (shareholder A and shareholder B) in preparation for the subsequent transition to their sons. In order to achieve this aim, the following operations have been carried out:

- Partial proportional demerger of Alfa in favor of a newly incorporated company ("Beta") through which the financial assets already held by the demerged company are assigned to the beneficiary Beta (such transaction is not abusive in itself);
- Purchase of the treasury shares by Beta (i.e. Beta acquires all the shares held by the minority shareholders C and D after the tax step-up of these shares).

With the described operations, if the minority shareholders C and D perform the step up of the shareholdings in the beneficiary Beta, according to the Italian Tax Authority, they create the conditions to implement a "*non-standard termination*" in order to minimize the tax

burden by exploiting the revaluation rules applied.

This tax advantage consists in the tax savings deriving from the payment of a substitute tax of 11% on the appraised value of the shareholdings, instead of the 26% withholding tax ordinarily applied to capital income ("*redditi di capitale*"). Moreover, the proposed reorganization appears to be lacking in economic substance, as it is not expected to produce significant effects other than the tax advantages described (e.g. disposal of the shares to third parties).

Therefore, in the sequence of the envisaged transactions, the Italian Tax Authority does not recognize any advantage other than the one represented by the tax savings for the shareholders C and D deriving from the disposal of the previously stepped up shares.

Anti-abuse rules in hypothesis of demerger Italian Tax Authority - advance tax ruling n. 155, March 5th, 2021

The total non-proportional demerger implemented to create the conditions for a generational transition does not constitute an abuse of law when it does not produce any undue tax advantage.

The facts subject to the anti-abuse examination concern the total demerger of Alfa (a family holding company) in favor of the operating subsidiaries Beta and Gamma. As a result of the demerger, were assigned to Beta and Gamma the operating buildings already leased and the equipment already used by the two beneficiaries.

The demerger transaction is defined as "total" as it concerns all of the assets of the demerged company Alfa. Moreover, it is a (partially) asymmetrical demerger because, once the operation is completed, some of the company's shareholders will not be entitled to any shareholding in the beneficiary Beta, but rather to hold equity shares in Gamma.

Therefore, according to the Italian Tax Authority, the total non-proportional demerger operation would not have led to the achievement of any undue tax advantage, being a typical act of reorganization of the family's activities, also in view of a subsequent generational transition.

Contribution of Holding share capital

When it comes to contribution of Holding share capital, the so-called "realizzo controllato" regime under art. 177 par. 2-bis of TUIR implies the adoption of a look-through approach to check whether the participation threshold are met (i.e. more than 2-20% voting rights or more than 5-25% economic interest), that is all the second-tier shareholdings held in operative companies shall be taken into account in the light of the leverage effect stemming from the shareholding chain.

With the Response NO. 57 of January, 27 (2021), the Italian Revenue Agency adopts a "formal" legal interpretation claiming that the leverage effect applies also to second-tier trading companies, albeit the latter are owned by other trading companies.

In the case under discussion, the applicant is a physical person aiming to benefit from the *realizzo controllato* regime in relation to a 50% share contribution of the Holding "Alfa" owing 66,66% interest in the real estate company "Delta" and 66,66% interest in the trading company Epsilon; the latter holds two share participations (second-tier shareholding), one equal to 33,33% of Zeta share capital, the other to 20% of Eta share capital.

The Tax Authority claims that the leverage effect required to meet the minimum participation threshold shall not merely refers to Epsilon (i.e. first-tier trading company) but also to the second-tier participation threshold; as a result of such interpretation, the Office rejects the application pursuant to art. 177 par. 2-bis of TUIR.

Loss of the power of assessment related to long-term income items | Supreme Court June, 5th 2020, n. 10701

An italian permanent establishment of a foreign bank carried out, in FY 2003, a write-off of a receivable deductible in the same FY – pursuant to the tax provision at the time in force – up to 0,60% of the value of the receivables resulting from the balance sheet and, for the surplus, in the following nine FYs (from 2004 to 2012).

In 2009 the Revenue Agency issued a notice of assessment, related to FY 2004, geared to tackle, for Ires and Irap purposes, the deduction of the yearly quota related to the named surplus, arguing the inherence only partial to the business activity of the receivable written-off.
The Tax Court of appeal of Lombardy, in front of which the Revenue Agency appealed the Lower Tax Court decision favourable to the taxpayer, dismissed such an appeal, arguing, among other, that the loss of the power of assessment with regard to FY 2003 precludes to the same Agency the possibility to disregard, with respect to FY 2004, the deduction of the named one/ninth yearly quota, tackling, incidentally, the correctness of the initial deduction.
The order of the Supreme Court n. 10701/2020 argued, on the contrary, that the power of assessment related to long-term income items can be exercised up to December 31st of the fifth year following the one where has been filed the tax return including the single quota in which the income item has been splitted.
That stated, the order of the Supreme Court n. 10701/2020 submitted the case at issue in front of the United Divisions of the same Supreme Court, asking for the following question "if the loss of the power of assessment of the Revenue Agency, which intends to tackle a write-off of receivables resulting from the balance sheet and, more in general, a long-term income item, by reasons not depending on the mere wrong calculation of the related single quota of it, takes place when the term for the assessment of the tax return where the item is splitted has expired, or, on the contrary, when the term of the assessment of the tax return related to the FY in which the income item is matured and it has been included in the balance sheet for the first time has expired.
The sentence of the Supreme Court, United Divisions, of March 25th 2021, n. 8500, following the first of the named positions, has determined that the loss of the power of assessment of the tax authorities, which intend to tackle a long-term income item, takes place when the term for the assessment of the tax return where the item is splitted has expired.

OECD Secretariat updated guidance on tax treaties January 21, 2021: Interpretation of double taxation treaties - Covid 19

On 21 January 2021, the Organisation for Economic Co-operation and Development (OECD) published on its website an Updated guidance on tax treaties and the impact of the COVID-19 pandemic. This guidance revisits the guidance published on 3 April 20201 by the OECD Secretariat and intends to provide more tax certainty and guidance to taxpayers during the COVID-19 pandemic. The aim is to avoid that the criteria to determine the tax residence and taxation of companies and individuals, as established by tax treaty provisions, are affected and altered by the current emergency situation.
The spread of home/teleworking as a result of quarantine, the extension of the construction works in a Country different from the one where the operators are tax-resident, or travel restrictions to cross-border (and decision-maker) workers have caused uncertainty among the operators with reference to the creation of permanent establishment, residence status of individuals and companies (based on place of effective management) and double-taxations issue.
In a nutshell, the OECD clarifies that jurisdictions may adopt, in light of the extraordinary circumstances of the COVID-19 pandemic as a result of public health measures and based on the facts and circumstances, measures aimed at avoiding instances of creation of permanent establishment or double (non) taxation.

DST executive regulation of 15 January 2021 | additional deferral of payment/filing obligations | ITA Guidance (Circular no. 3 of 23 March 2021)

Following the public consultation ended on 31 December 2020, on January 15 2021, the Italian tax authority (ITA) 15 January 2021 released executive regulations for the DST's application as introduced by article 1, paragraphs 35-50, of the 2019 Budget Law and amended by art. 1, paragraph 678 of the 2020 Budget Law.

Executive guidance provides additional clarifications on the scope and parameters of the tax, definition of taxable person, digital content, notion of group, taxable revenues in scope and accounting an registration obligations. By way of Decree-Law no. 41 of 22/03/2021, the deadlines for the payment and filing of annual return are now set at 16 May and 30 June 2021 respectively.
With Circular 3/E of 23 March 2021, the Italian Revenue Agency has provided and extensive guidance and clarifications about the definition of qualifying taxable persons and services, exemptions, territorial nexus requirements, reporting and accounting obligations, refunds and double taxation reliefs.
The circular specifies that the obligation to keep special accounts is fulfilled by keeping the Monthly ledgers and the Explanatory Note, drawn up in accordance with Annex 1 to Executive guidance of 15 January, by the deadline for payment of the tax.
In view of the potential difficulties and the objective conditions of uncertainty encountered in the application of the accounting obligations, for the first tax year, any irregularities or errors committed in the transmission and compilation of the required data do not give rise to the application of penalties (Article 10(3) of the Statute of Taxpayers' Rights).

Ruling n. 135/2021 - Withholding tax exemption on dividends paid to the Swiss parent company

With the answer to the ruling no. 135 of 2 March 2021, the Italian Tax Authority provided clarifications on the application of the withholding tax on dividends paid to the Swiss parent company. In particular, ITA clarified that in order to benefit from the exemption provided by Article 9 of the Agreement between the European Union and the Swiss Confederation (as replaced by the 2015 amending protocol to Article 15), the Swiss parent company must be subject to all three levels of taxation in Switzerland (municipal, cantonal and federal).
It is recalled that Article 9 of the Agreement provides that dividends paid by a company to its parent entity are not subject to taxation in the State of origin, if the following requirements are jointly fulfilled:

- the parent company holds directly at least 25 % of the capital of the subsidiary for a minimum of two years;
- one of the two companies is resident for tax purposes in a Member State and the other company is resident for tax purposes in Switzerland;
- neither company is resident for tax purposes in a third State on the basis of a double taxation treatment with that third State;
- both companies are subject to direct tax on corporate profits without benefiting from exemptions and both adopt the form of a corporation.

More specifically, ITA focuses on the last requirement, given that as of 1 January 2020, the Swiss company in question no longer benefits from the favourable regime for Swiss holding companies and, therefore, will be subject to all three levels of taxation as mentioned above. ITA concludes, therefore, that Article 9 is applicable, without prejudice to the general anti-avoidance clause set forth in Article 10-bis) of Law No. 212/2000.

OIC final version of the Documento interpretativo n. 7

OIC has published the final version of the Documento interpretativo n. 7, concerning revaluation of assets. The documents states that – at least for accounting purposes –the intangible assets existing at the date of the revaluation can be revaluated even if the relative acquisition costs have been previously recognized in P/L.

Indirect Tax | VAT

Proof of transport or shipment of the goods according to Article 45-bis of the EU Council Implementing Regulation no. 282/2011 - Ruling Answer no. 141/E, dated March 3, 2021

ITA provided certain clarifications on Art. 45-bis of EU Regulation no. 282/2011, related to the proofs of transport or shipment of goods for intra-community supplies.

More in depth, art. 45-bis introduced a presumption regarding the intra-community supply of goods by providing two lists of documents proving the shipment or transport of the goods from one Member State to another.

The company at stake was asking for the compliance with art. 45-bis mentioned of his set of documentation proving the transport. Such documentation was composed of: (i) sale invoice; (ii) Intrastat reporting; (iii) proof of payment of the goods; (iv) agreement with the purchaser; (v) CMR.

In this regard, the Explanatory notes of the EU Commission "Quick Fixes 2020" clarified that existing national VAT rules which establish conditions regarding proof of transport more flexible than those provided for in Article 45a IR may continue to be applied.

In the light of the above, ITA confirmed - as in a circular letter no. 12/E of 12 May 2020 and in ruling answer no. 100/2019 - that in all cases in which the presumption referred to in article 45-bis is not applicable, the national practice continues to apply, and validated the set of document of the company.

Update on COVID-19

Supplies of goods necessary for the COVID-19 pandemic – application of the simplifications granted by art. 124 of Decree DL 34/2020 – ruling answers no. 213 and 218 dated March, 26 2021

ITA confirms the clarifications already provided with Circular 26/2020 based on which the simplifications granted by art. 124 only applies to supplies carried out for health/sanitary purposes related to goods indicated in paragraph 1, and to supplies of services under art. 16, par. 3, of VAT Decree.

More in depth, with ruling answer no. 213, not disposable gloves (e.g. used for house cleaning) are not eligible for the simplification under art. 124.

Furthermore, as regards the supply of medical equipment (rent of pulmonary ventilators) ruling answer no. 218 confirmed the exemption regime or the application of VAT with 5% VAT rate depending on the transactions' date (if carried out before 31.12.2020 exemption regime applies).

VAT deduction for goods donated in relation to the COVID-19 emergency - Ruling answer no. 150, date March 4, 2021

Italian Tax Authorities clarified the conditions to benefit of the VAT deduction for donation of goods related to COVID-19, pursuant to article 66 par. 3-bis, of Law Decree no. 18 of March 17, 2020, so-called "Decreto Cura Italia", according to which - for VAT deduction purposes - purchases of goods donated are considered to be carried out for business reasons.

In the case at stake, a company realized and donated a structure inside a COVID-19 hospital. ITA clarified that such donation is considered as VAT exempt with right of deduction granted and without prejudice for the pro-rata.

VAT treatment for imports of goods necessary for the containment and management of the Covid-19 emergency - Circular letter no. 9/2021, dated March 3, 2021, of the Customs Agency

The Customs Agency provided important clarifications on the VAT treatment of imported goods necessary for the COVID-19 emergency.
Starting from 01.01.2021 the sale of goods listed in Table A, part II-bis, no. 1-ter1 attached to Decree 633/1972 are no longer VAT exempt but subject to 5% VAT rate.
Furthermore, art. 1, par. 452 of Budget Law 2021 states that the sale of diagnostic tools for COVID-19 and the strictly related supplies of services are VAT exempt until 31.12.2022.
As regards the goods that can benefit of such reduced VAT rate (5%) Customs Agency updated the list attached to Circular 12/2020, by introducing new TARIC codes.
In conclusion, until 31.12.2022, the importation of goods listed at annex 2 of Circular 9 at stake is VAT exempt.

Postponement of terms for assessment - Law Decree no. 183 dated 31 December 2020, converted into law no. 21 dated February 26, 2021

Further to the COVID-19 pandemic, the Government has enacted several decrees in order to postpone the deadlines for tax payments and tax audits.
More in detail, it is provided that:

- deeds of assessment, deeds of application of penalties, which deadline was elapsing on the period included between 8th March 2020 and 31st December 2020, will be served in the period between 1st March 2021 and 28th February 2022;
- the deeds and communications provided by art. 157, par. 2 of Decree 34/2020 (such as communications of irregularity ex art. 54-bis of the Italian VAT Decree) are served within the same deadline mentioned above.

Clarifications on VAT Plafond

Use of the VAT plafond by non-established taxable persons - Ruling Answer no. 148/E, dated March 4, 2021

According to ITA, a foreign entity established in a EU Member State and directly identified in Italy for VAT purposes can benefit of the habitual exporters regime and, therefore, it can use the plafond/ceiling pursuant to article 8 of Presidential Decree 633/1972.
Furthermore, ITA underlined that the tax identification of the non-resident can take place, in the absence of his permanent establishment, directly, pursuant to art. 35-ter of Presidential Decree no. 633 of 1972 or by means of a tax representative, pursuant to art. 17, third paragraph, of Presidential Decree no. 633 of 1972.

Forbidden to use the plafond in case of leasing - Supreme Court of Cassation, decision no. 535, dated January 14, 2021

The leasing contract related to an immovable property implies the transfer to the lessee of the economic availability of it and, therefore, it is equal to a transfer of property/supply of goods on such real estate asset and not to a supply of services. As a consequence, the habitual exporter cannot use the plafond for the purchase in leasing of an immovable property. This is the principle stated in the decision at stake.
The prohibition to use the plafond for the purchase in leasing of immovable properties is not clearly stated in Italian law dispositions, so its prohibition has been always stated by Italian Courts and by Italian tax authorities that clarified such principle in Circular 145/98, and ruling answer no. 304/2020.

Indirect Tax | Customs

On July 1st, 2021, the "tax on the consumption of manufactured goods with single use" (so-called "Plastic Tax") will come into force

The 2020 Budget Law (Article 1, paragraphs 634-358, Law No. 160/2019), implementing the European provisions, in particular Directive (EU) No. 904/2019, established the "tax on consumption of artifacts with single use ", so-called "Plastic Tax". The entry into force of the tax was set for July 1st 2020. A first postponement to January 1st 2021 has been provided by art. 133, Legislative Decree 34/2020 (converted into Law no. 77/2020). The Budget Law 2021 (Article 1, paragraph 1084, Law no. 178/2020), made some changes to the original tax text and extended further its entry into force to 1 July 1st 2021.

The tax applies to the consumption of products, called "MACSI", which have the following characteristics: i) they are intended for the containment, protection, handling or delivery of goods or food products; ii) they are made with the use, even partial, of plastic materials consisting of organic polymers of synthetic origin; iii) they are conceived, designed or placed on the market for a single use.

Are also considered as MACSI: devices, made of organic polymers of synthetic origin, which allow the closure, marketing or presentation of the same MACSI or of the manufactured products; semi-finished products, including preforms, made of plastic material used in the production of MACSI.

MACSI that are compostable in compliance with the UNI EN 13432: 2002 standard, medical devices classified by the Single Commission on medical devices, established pursuant to article 57 of law no. 289, as well as the MACSI used to contain and protect medicinal preparations, are excluded from the application of the tax. The tax is also not payable on the plastic material contained in the MACSI, which comes from recycling processes.

The tax arises at the time of production, import or introduction from EU countries of the MACSI and becomes payable upon entry for consumption in the territory of the State or upon definitive importation. The amount of the tax is € 0.45 per kilogram of plastic material and must be paid by means of a quarterly return. Refund is expected in favor of economic operators for MACSI sold to the EU or exported.

The subjects obliged to pay the Plastic Tax are: for MACSI manufactured in Italy, the manufacturer or the seller / client (resident or non-resident in the national territory), i.e. the subject who requests the manufacture of MACSI on account of work and subsequently sells them (so-called seller); for MACSIs from other European Union countries, the person who buys MACSI in the exercise of its economic activity (as in the case of B2B sales to Italian purchasing companies) or the transferor in the case of B2C sales to private consumers in Italy; for MACSI from third countries, the importer.

Implementation measures are expected to define methods of implementation of the tax. Among the disciplined aspects there will be the identification of MACSI through the use of the codes of the EU combined nomenclature, the content of the quarterly return, the procedures for registering the obliged subjects, the procedures for keeping the accounting related to the tax charged to the obliged subjects, the additional data to be indicated in the invoices for the sale and purchase of MACSI for tax purposes. To date, the Customs Agency has anticipated the draft of the directorial determination containing some of the aforementioned implementing provisions, while the final text should be published by the end of May 2021.

Administrative penalties are expected for those who will fail to comply with the obligations related to the tax.

Global Employer Services

Circular Note no. 33 released on the 28th of December 2020 – "impatriati" tax regime

The Italian Revenue Agency, through the Circular Note no. 33/2020, has formalized a number of clarifications regarding its interpretation of article 16, Legislative Decree no. 147 /2015 as amended by article 5, Law Decree no. 34/2019 (hereafter also "*Decreto Crescita*").
As is well known, the amendments included in article 5 of *Decreto Crescita* have further modified the objective and subjective requirements to benefit from the said special tax regime. Indeed, starting from the 2020FY, the tax exemption provided by the regime has been increased from 50 to 70 percent and, in the case that the individual meets other requirements provided by the law, the special tax regime might be extended for other five years (i.e. equal to a total of 1+9 fiscal years).
In addition, in the light of article 13 *ter*, Law Decree no. 124 (so-called *"Decreto Fiscale"*), the Italian Legislator has extended the possibility to enforce the renewed special tax regime also to the individuals who have transferred their residence in Italy from the 30th of April 2019 to the 2nd of July 2019 (i.e. even before the 2020FY).
Hereafter there is a brief summary of the main clarifications provided by the Italian Revenue Angency, through the mentioned Circular Letter no. 33/E/2020.
Please note that the clarifications provided within the Circular Letter no. 17/E/2017 remain valid, particularly with reference to the general features, which have not modified by the new provisions.

1. Transfer of residence to a central or southern Italian Regions

Starting from the 1th of May 2019, the regime provides a tax exemption equal to the 70 percent of the employment income (or self-employment, or individual business income) produced in Italy from the tax period in which the transfer of tax residence occurs and for the following four tax periods (i.e. 1+4 years). However, in the case of a transfer of residence to a central or southern Italian Region (i.e. Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sardegna, Sicilia) **the tax exemption is increased to 90 %.**
In this regard, the Circular Notes clarifies that the eligible individual shall enforce the 90 percent reduction even if he carries out his work activities in a region (in Northern Italy) other than the one of residence (i.e. the place of his habitual abode).
The abovementioned condition must occur from the tax period in which the taxpayer transfers his residence to one of the abovementioned central or southern regions and remain for the entire period of enforcement of the regime.

2. Employer and foreign customer

Unlike the provisions in force until the 30th of April 2019, the present version of article 16, Legislative Decree no. 147/2015 no longer requires that the work activities has to be carried out in Italy for the benefit of an Italian resident company. As a result, as clarified by the Italian Tax Authorities, the "impatriati" regime is enforceable also by an employee of a non-resident foreign employer or foreign contractor (in the case of self-employment or individual business) who is perceiving employment income for the activities performed in Italy.In this regard, considering that a permanent establishment (PE) of the non-resident employer may arise in Italy, such an interpretation shall be further assessed by considering the provisions pursuant to article 162 of the Italian Tax Code (the so-called "TUIR") and/or to the Double Tax Treaty eventually in force between the jurisdictions involved.

3. Taxation bonuses and variable remunerations

Since to benefit from the special tax regime the income must be sourced in Italy, the foreign sourced income related to previous fiscal years but perceived after the transfer of tax residence in Italy is excluded from the regime.

On the other hand, any remuneration accrued during the period in which the special tax regime applies (either 1+4 years or 1+9 years) but payable – on a cash basis criterion – after its date of expiring, will be subjected to the ordinary personal income tax rates.

4. Counter-exodus Fund ("Fondo Controesodo")

As already said, the tax exemption equal to 70 percent of the taxable income - provided for by the *Decreto Crescita* - was automatically enforceable to individuals who have transferred their tax residence in Italy from 2020 fiscal year, onwards.

However, as a result of the provisions of the mentioned *Decreto Fiscale*, the same rules of taxation would also apply to those who have transferred their tax residence in Italy from the 30th of April 2019 to the 2nd of July 2019, within the limit of the availabilities of the so-called "counter-exodus fund" (*Fondo Controesodo*). As of today, notwithstanding the fund has been already allocated through article 13-*ter* of *Decreto Fiscale*, the Italian Ministry of Economy and Finance (the so-called MEF) has not defined – through a bespoke Ministerial Decree (the "MEF Decree") - the operational arrangements to adhere to the fund.

Thus, as clarified in the Circular note in comment, pending the adoption of the said MEF Decree, even those who have transferred their tax residence in Italy within the period between the 30th of April 2019 until the 2th of July 2019 will have to continue to apply the tax previous exemption equal to the 50 percent in lieu of the most favorable measure of 70 percent. As a result, considering the present restrictions, the taxpayers who – in the 2020FY – have already applied the most favorable regime by relying on the measures included in the *Decreto Fiscale*, in the lack of the said MEF Decree, might experience a downgrade.

On the other hand, for the persons who qualified as Italian tax resident from the 2020FY, the renewed special tax regime in question is operating independently from the enactment of the abovementioned MEF Decree.

5. Employees returning from a secondment abroad

In the case of a return after a secondment abroad, the Circular Note envisage a more rigid interpretation of the said requirements. The new, more rigid reading provided by the Circular Note has already emerged within recent answers to bespoke tax rulings published by the Italian Revenue Agency[1].

For instance, the following circumstances may indicate a situation of substantial continuity: (a) the recognition of holidays accrued before the new contractual agreement; (b) the recognition of a seniority from the date of first hiring; (c) clauses in which it is envisaged that at the end of the secondment, the employee is reintegrated within the organization of the seconding Company and the terms and conditions of employment which where applicable before the secondment apply again; (d) clauses aimed to avoiding the severance/termination payments; (e) the absence of the trial period.

Following the same line of reasoning, the possibility of benefiting from the present special tax regime was excluded also in the case of a return to Italy, following a period abroad, which corresponded to the suspension of the Italian employment contract (for example, in the case of unpaid leave).

[1] Answer to the Ruling no. 42/2021

6. How to enforce the special tax regime

The employer enforces the tax exemption from the payslip following the employee's written request and/or at the time of the year-end adjustments, computing the withholding tax on the amount of taxable income already reduced to the percentage set forth by the *Decreto Crescita*, starting from the hiring date.

In the case that the employer do not enforce the relief, the taxpayer can claim it directly through the tax return, provided that all requirements are fulfilled. The employment income has to be included within the tax return already reduced by the applicable exemption percentage.

In this regard, the Circular Letter clarifies the following points:

- **Corrective tax return**: if the taxpayer has not opted for the relief at the time of the filing of the tax return (for instance *Modello 730*), they can benefit from it by submitting a corrective tax return within the ordinary deadline (i.e. *Modello Redditi Persone Fisiche "correttivo nei termini"*);
- **Tax return filed within the extended deadline of 90 days**: if the taxpayer has not filed the tax return within the ordinary deadline, either by choice or by mistake, they can still benefit from the tax regime by submitting the tax return by the extended deadline of 90 days from the ordinary deadline (i.e. *dichiarazione tardiva*). A fixed penalty is, in any case, applicable (not material);
- **Amended tax return**: since adhering to the special tax regime shall be read as an option communicated by the single individual, the taxpayer - after the expire of the said extended deadline of 90 days after the ordinary deadline - cannot file an amended tax return (i.e. *dichiarazione integrativa a favore*) to claim the regime;
- The expiration of the deadline to present the corrective and/or late tax return (by the 90 days term) does not impede to the taxpayer to opt for the tax relief for the remaining years of the five (or ten) years period during which they are entitled to it.

7. Professional sportsmen

Art. 16, para. 5-*quarter*, Legislative Decree no. 147 /2015 as drafted by article 5, para. 1, letter d) of *Decreto Crescita* extended the scope of application of the tax relief to professional sportsmen who can now opt for the tax benefit by paying a contribution equal to the 0,5 percent of their taxable income, as set forth by para. 5-*quinquies*.
The criteria and methods to implement the tax relief for sportsmen referred to in paragraph 3, have been established by the Ministerial Decree of the 26th of January 2021.

8. Managers and associates of the financial sector

Article 33, Law Decree no. 78/2010 introduced an additional 10 percent rate on the variable remuneration paid in bonus or stock options that exceeds the fixed remuneration. This 10 percent is applicable to managers and associates of companies that operate in the financial sector, and it is withheld by the Italian employer at the time of distribution.
In this regard, the Circular Letter has clarified that the variable remuneration subject to the aforementioned rate of 10 percent cannot benefit from the tax relief provided for by the "*impatriati*" regime.

9. Italian citizens not enrolled within the AIRE

According to article 16 as amended by Legislative Decree no.147/2015, Italian citizens who returned to Italy starting from January 1st 2020 and were not register within the AIRE while abroad, are eligible to the tax relief provided that they were resident in another State pursuant to a Double Tax Treaty, in the two tax periods prior to their return.
The Circular Letter specified that the same considerations apply to individuals who qualified as Italian tax resident as of December 31st 2019 and who had already transferred their residence in Italy.

10. The extension of the tax relief for an additional five-year period

Provided the fulfillment of certain requirements, the *Decreto Crescita* has exteded the duration of the tax relief for five additional fiscal years, with a **50** % exemption. Hence, the said provisions have extended the relief for a maximum of 1+9 years.
An individual is eligible to the additional 5 years depending on the fulfillment of - at least - one of the following requirements, further clarified by the Circular Note:

- The taxpayer has at least one minor or dependent child, even if in pre-adoptive foster care (if the individual has at least three minor or dependent children, the tax relief increases to **90** %).
- The taxpayer purchases a residential property in Italy in the twelve months prior to their transfer, or does so within the first 5 years during which they benefit of the favorable tax regime.

Amendments introduced by the 2021 Italian Budget Law

Access to the additional 5-year period is made available to individuals who benefitted from the previous formulation of the Italian special tax regime (50% exemption) upon a voluntary payment of 5% or 10%

The 2021 Italian Budget Law has reduced the disparity of treatment between those who accessed the renewed version of the regime (**70%** or **90%** exemption), and those who accessed the previous version of the "impatriati" (50% exemption). The latter, indeed, seemed to excessively penalize the eligible taxpayers who could benefit from a lower deduction of the taxable income (50%) for half of the fiscal years concerned (1+4 years maximum).

In thi regard, the provisions of the 2021 Italian Budget Law allowed taxpayers who transferred their residence to Italy before 2020 - and who were beneficiaries of the special tax regime as of December 31st 2019 (at 50%) - to extend the tax exemption for an additional 5-years period upon payment of an amount equal to 5% or 10% of the employment or self-employment income earned in Italy in the year prior to the one in which the option is exercised. The condition to be eligible to the extension is either to have minor or dependent child/children, or to purchase a residential property in Italy.

The Provision of the Director of the Revenue Agency, Protocol no. 60353/2021 of the 3rd of March 2021, defined the operating procedures to communicate the option. Under certain conditions, Italian or EU impatriates who transferred their tax residence to Italy before the 30th of April 2019 and who were beneficiaries of the tax exemption as of the 31st of December 2019, can extend its duration for a further 5-years period, with a 50% or 90% reduction of their taxable income.

The option will be considered exercised upon the payment of 10% or 5% of the employment or self-employed income earned in the previous year. The payment is to be executed through the F24 Form no later than the 30th of June of the year following the last year of the initial 5-years period, or within 180 days from the publication of the said Provision (August 30th 2021), if the initial 5-years period already ended on the 31st of December 2020.

The option can be exercised by paying an amount equal to:

- **10%** if at the time of exercising the option the taxpayer has at least one minor child even in pre-adoptive foster care or has become the owner of at least one residential property in Italy following the transfer to Italy or in the 12 months prior to the transfer;
- **5%** if at the time of exercising the option the taxpayer has at least three minor children even in pre-adoptive foster care and becomes or has become the owner of at least one residential property in Italy.
- Then, the Italian employer will withhold taxes on:
- the **50%** of the income earned by those employees who, at the time of exercising the option, confirm to have at least one minor child even in pre-adoptive foster care or to have become owners of a residential property in Italy;
- the **10%** of the income earned by those employees who, at the time of exercising the option, confirm to have at least three minor children, even in pre-adoptive foster care.

Summary of the current regime " Impatriati " in force

Briefly, the "*impatriati*" regime outlines different access criteria and different exemptions, depending on the date in which the residency is actually transferred:

- If the transfer occurred before the 30th of April 2019, the access requirements are those in force before the *Decreto Crescita,* where a distinction existed between the "impatriati" holding managerial position and the one holding a degree. The tax relief amounts to a **50%** exemption of the taxable income for 5 years, with the option to extend it for 5 additional years pursuant to 2021 Italian Budget Law as explained by Provision no. 60353/2021;
- If the transfer occurred between the 30th of April 2019 and the 2nd of July 2019, the access requirements to be considered are those included in the *Decreto Crescita* and the taxable income is reduced by **50%** (extendable if the taxpayer has minor children or purchased a residential property) until the the operational arrangements to adhere to the *Fondo-Controesodo* is approved;

- If the transfer occurred after the 3rd of July2019 (hence, the tax residency is acquired starting from the 2020) the access requirements are those of *Decreto Crescita*, with a **70%** or a **90%** exemption of the taxable income and the possibility to extend the relief for 5 additional years with a **50%** or a **90%** exemption (according to specific criteria).

Tax Litigation

Extension and suspension of the terms for the assessment and collection and provisions in relation to the facilitated definition (art. 157 Law Decree 19/5/2020 n. 34 and art. 68 Law Decree 17/3/2020 n. 18, as amended by art. 22-bis Law Decree 31/12/2020 n. 183, converted with Law 26/2/2021 n. 21; art. 4 and 5 Law Decree 22/3/2021 n. 41, Italian Official Journal 22/3/2021 n. 70, so called "Decreto Sostegni")

As part of the measures aimed at encouraging the recovery of economic and social activities following the Covid-19 pandemic, provisions were issued with reference to the assessment and collection of tax charges.
The main provisions are reported below.

Extension of the terms of notification of tax deeds

For tax claims and sanctioning deeds whose forfeiture terms expired between 8 March and 31 December 2020 have been provided their issue by 31 December 2020 and notification in the period between 1st March 2021 and 28 February 2022, except in cases of non-postponement and urgency or obligations with simultaneous payment of taxes.
In the same period are notified, sent or made available the deeds, communications and invitations drawn up or issued (massively) by 31 December 2020, with a 14-month deferral of the terms for the notification of payment orders following the same communications.
No interests are due for the period from 1st January 2021 until the date of notification of the aforementioned deeds, communications and invitations.
The methods of application of the provisions in question will be identified with a Director of the Revenue Agency deed.
There is also the possibility of facilitated definition (with payment of taxes, interests, social security contributions, excluding penalties and additional charges) with reference to communications issued by 31 December 2020 as a result of the automated controls of the returns for the purposes of Income Tax and VAT for the tax period in progress as of 31 December 2017 and not sent by virtue of the aforementioned suspension, as well as with reference to the communications processed by 31 December 2021 for returns relating to the tax period in progress as of 31 December 2018. The facilitated definition is limited to taxpayers who have undergone a reduction of more than 30 percent in year 2020 turnover compared to the turnover of the previous year, as resulting from the returns submitted for VAT purposes by the deadline for the submission of the VAT return for the year 2020. The methods of application will be defined with a Director of the Revenue Agency deed.

Suspension of the terms of payment of the charges entrusted to the Collection Agent

Payments due from 8 March 2020 to 30 April 2021 (as provided by the Law Decree n. 41/2021 amending the previous period 8 March 2020 - 28 February 2021), deriving from payment notices and executive assessment notices have been suspended, with the obligation to make a single payment within the month following the end of the suspension period. .
It was also provided that the failure, insufficient or late payment of the installments, to be paid in 2020, of the facilitated definitions (so called "Rottamazione ter" - art. 3 and 5 of Law Decree n. 119/2018 and "Saldo e stralcio" - art. 1 paragraph 190 and 193 Law n. 145/2018), would not have resulted in the ineffectiveness of the same definitions in the event of full payment by 1st March last. The

Ministry of Economy and Finance had announced that a provision was being drawn up so as to postpone the deadline of 1st March 2021 (for the payment of the aforementioned installments of 2020 not yet paid and the first installment of 2021 of the so called "Rottamazione ter"): the payments, even if not executed by that date, will be considered timely as long as they are made within the limits of the deferral that will be arranged (see Press Release n. 36 of 27 February 2021).

In this regard, the Law Decree n. 41/2021 provides that the payment of the installments due in 2020 and 28 February, 31 March, 31 May and 31 July 2021 is considered timely made and does not determine the ineffectiveness of the definitions if entirely made (i) within 31 July 2021 for the installments expiring in 2020; (ii) within 30 November 2021 for the installments expiring on 28 February, 31 March, 31 May and 31 July 2021.

It is then provided the automatic cancellation of debts (excluding certain cases) for a residual amount of up to euro 5,000, including capital, interest and penalties, entrusted to the collection agents from 1 January 2000 to 31 December 2010 and referring to subjects who have achieved, in the 2019 tax period, a taxable income of up to euro 30,000. The methods and dates for the cancellation of debts will be provided by decree of the Ministry of Economy and Finance.

Transfer Pricing

Transfer pricing: Recent developments on cooperation between taxpayers and tax authorities

As illustrated at the National Conference organized by our Firm on 9th and 10th February, between the second half of 2020 and the beginning of 2021, a number of important changes have been introduced in the transfer pricing regulations, particularly with reference to the cooperation between taxpayers and tax authorities, resulting in a mix of opportunities and additional administrative burdens.
One significant example is the thorough review, after more than a decade after its introduction, of the so-called "penalty protection regime" which allows "cooperative" taxpayers to avoid administrative penalties in the event of a violation of the arm's length principle. In fact, if, on the one hand, the new Transfer Pricing Regulations make the documentation more flexible and aligned with the OECD recommendations, on the other hand, they establish more stringent conditions for its "suitability".
Furthermore, companies will have to take into careful consideration the disclosure obligations to the tax authorities arising from the adoption into Italian law of EU Directive 2018/822 (so-called “DAC6 Directive”), concerning the mandatory automatic exchange of information relating to “cross-border arrangements”, which provides for specific disclosure obligations also in relation to certain types of cross-border intercompany transactions.
Finally, new regulations on the Mutual Agreement Procedures and on Advance Pricing Agreements (so-called APAs/BAPAs) have also been introduced. While, on the one hand they extend possible roll-backs, on the other hand they introduce, for the first time in the history of relations between taxpayers and the Revenue Agency, a mandatory fee to access the negotiation of bilateral or multilateral advance agreements.

Italian New Transfer Pricing Regulations for «Penalty Protection»

November 23, 2020, the Head of the Italian Revenue Agency issued new Regulations (“Provvedimento”) that replace those issued on September 29, 2010.
The new provisions are applicable to penalty protection documentation relevant to FYs ongoing at the date of the publishing (i.e. documentation relevant to FY 2020, for entities with a calendar FY), and provide for a number of important changes.
In particular, the main relevant changes introduced by the new Regulations are referred to:

- Changes to the structure and content of both Country file and the Masterfile;
- **Mandatory submission of both the Countryfile (in Italian only) and the Masterfile (in Italian or English) for all companies** that adhere to the "documentary standards" regime, including the Italian PEs of foreign companies;
- **Mandatory digital signature of documents with timestamp by the ordinary date of submission of the tax return,** in order to prove that they have been prepared by the deadline;
- Extension of the deadline for the submission of documentation (from 10 to 20 days from the formal request by the Revenue Agency);
- **Introduction of the option to document only certain intercompany transactions**, but in this case Penalty Protection would be granted only with reference to the transactions actually documented;
- The introduction of stricter limitations to benefit from the simplifications provided for “small and medium-sized enterprises”;

- Introduction of a specific and additional "document" to be drafted in the event that a simplified approach is adopted to document conformity of the provision of "low value added" services with the arm's length principle.

Directive DAC6: Specific Hallmarks concerning Transfer Pricing

The Law Decree n. 100/2020 dated 30 July 2020 (hereinafter the "Decree"), has been published on August 11, 2020 in the Official Gazette. The Decree Implements Directive (EU) 2018/822 of 25 May 2018 regarding mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (hereinafter "DAC 6") with specific regards to matters relating to transfer pricing regulations where there are particular distinguishing features (so-called "Hallmarks").

In particular, the mandatory automatic exchange of information may arise, if certain distinctive elements set out in Annex 1 of the aforementioned Decree are applied, with reference to the following cases:

Hallmarks C. Specific hallmarks related to cross-border transactions, under certain conditions and/or in the presence of transactions that do not comply with the arm's length principle;

Hallmarks E. Specific hallmarks concerning transfer pricing

1. An arrangement that involves the use of unilateral *"safe harbor"* rules.
2. An arrangement involving the transfer of hard-to-value intangibles (*Hard-To-Value Intangibles*) between associated enterprises.
3. Cross-border intragroup transfer of functions, risks and/or assets and/or activities.

Implementation of the European Directive on International Dispute Resolution Mechanisms: Legislative Decree 49/2020 published on 10 June 2020 in the Official Gazette

The Law Decree n. 49/2020 dated June 10, 2020 (hereinafter the "Decree") has implemented the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, effective since June 26, 2020.

The Decree applies to MAPs filed as of 1 July 2019 with reference to controversial issues relating to fiscal years starting from 1 January 2018.

The Directive, arising from the need to fill some gaps in terms of access, duration and effectiveness of MAPs, introduces in the Italian legal framework a new instrument to resolve disputes "arising from the interpretation and application of the International Agreements and Conventions for the Avoidance of Double Taxation on income and on capital to which Italy is a party and of the Convention 90/436/EEC of 23 July 1990".

The Directive, as implemented by the Decree, provides for significant innovations. In particular, the scope of the procedure is widened and extended to other double taxation issues that could stem from the application of international tax treaties, a part from transfer pricing issues and attribution of profits to permanent establishment. In addition, the Legislative Decree has eventually aligned the Italian regulations to the OECD guidelines, by allowing the Italian Competent Authority to enter into a MAP also with reference to cases already "settled" domestically, however, only with regard to cases originated from fiscal year 2018 and onwards.

New Regulations concerning Advance Pricing Agreements (APAs)

The *Recent Budget Law* 2021 no. 178 of December 30, 2020, published in the Official Gazette on January 1, 2021, has introduced into the Italian Law significant changes concerning Advance Pricing Agreements (APAs), both unilateral and bilateral/multilateral (hereinafter "BAPA").

In particular, article 1, par. 1101, of the Law has introduced new provisions on "*Advance arrangements for companies with international activities*", within the general framework of the rules set forth by Presidential Decree n. 600/1973, in particular in art. 31-ter.

Essentially, according to the new provisions, in certain cases and under certain circumstances, the effects of an APA/BAPA can be rolled back to the previous fiscal years for which the statute of limitation has not yet expired.

In this context, **unilateral APAs** can be *"rolled-back"* to previous fiscal years if:

- The factual and legal circumstances at the basis of the agreement are the same with reference to one or more of the fiscal years prior to the signing of the agreement; and
- The statute of limitations of such fiscal years has not yet expired and for such tax periods, no access, inspections audits or other administrative assessment activities have begun of which the taxpayer has been formally made aware.

Therefore, unilateral APAs may not only bind the taxpayer and the Italian tax authorities for the fiscal year for which the agreement was entered into and the four subsequent ones, yet also retroactively for fiscal years still open to tax audit, if the above conditions are met.

With reference to **bilateral / multilateral APAs**, they might be *"rolled-back"* to previous fiscal years for which the statute of limitation has not yet expired, if:

- the taxpayer has filed a roll-back request in the ruling Application;
- the foreign competent authorities accept to extend the agreement to previous fiscal years;
- the factual and legal circumstances at the basis of the agreement reached with the foreign competent authorities recur in previous fiscal years; and
- for such fiscal years, no access, inspections and audits or other administrative assessment procedure of which the taxpayer has formal knowledge have begun.

Moreover, the *Budget Law* introduced a **commission fee to be paid by taxpayers** for the filing of a request for BAPA.

The commission fee rates are as follows:

1) Ten thousand euros (€ 10,000) if the total turnover of the group to which the taxpayer belongs is less than one hundred million Euro.
2) Thirty thousand euros (€ 30,000) if the total turnover of the group to which the taxpayer belongs is between one hundred million and seven hundred and fifty million Euro.
3) Fifty thousand euro (€ 50,000) in the case in which the total turnover of the group to which the taxpayer belongs is greater than seven hundred and fifty million Euro.

In conclusion, the new provisions significantly extend the possible protection achievable through the APA program.

Incentives

Non-repayable grant (art. 1, paragraph 1-9 of Decree-Law No. 41 March, 22th 2021, published in the official gazette on March 22th 2021)

In order to support the economic operators affected by the epidemiological emergency "Covid-19", the legislator has provided for a non-repayable grant for VAT subjects, resident or established in Italy, who carry out business activities, art or profession or generate agricultural income, thus also including non-commercial entities, third sector entities and civilly recognized religious entities, in relation to the commercial activities. The subjects whose activity is ceased on the date of entry into force of the Decree, public bodies and subjects indicated in art. 162-*bis* of the Italian Tax Code (financial intermediaries, holding companies, etc.) are excluded from the grant.
This grant is exclusively available for entities:

- with revenues not higher than Euro 10 million in the second fiscal year before the current one;
- for which the average monthly amount of turnover for the year 2020 is at least 30 percent lower than the average monthly amount of turnover for the year 2019.

The grant is calculated by applying a percentage to the difference between the average monthly amount of turnover for the year 2020 and the average monthly amount of turnover for the year 2019. The percentage is calculated, based on the revenue of the second fiscal year before the current one, as follow:

a) 60% for entities with revenues not higher than Euro 100,000;
b) 50% for entities with revenues between Euro 100,000 and 400,000;
c) 40% for entities with revenues between Euro 400,000 and 1,000,000;
d) 30% for entities with revenues between Euro 1,000,000 and 5,000,000;
e) 20% for entities with revenues between Euro 5,000,000 and 10,000,000

The subjects that have open the VAT number after 1 January 2019 could request the incentive even if they do not met the abovementioned criteria.
The minimum amount is equal to € 2,000 for entities and € 1,000 for individuals and cannot exceed € 150,000
The grant is not taxable for IRES and IRAP.
Alternatively, the taxpayer can irrevocably choose to have the grant as tax credit, to be used with the F24 Form for offsetting other tax liabilities. The request should be filed to the Italian Tax Authority.
As specified by the Provision Prot. 77923 of the Director of the Revenue Agency dated 23 March 2021, the applications should be filled electronically from 30 March 2021 and within 28 May 2021.

Use of the state aid included in the Temporary Framework (art. 1, paragraph 13-17 of Decree-Law No. 41 March, 22th 2021, published in the official gazette on March 22th 2021)

Article 1, par.13 of the Law Decree 41/2021 introduced some provisions in order to regulate the access to certain state aids, authorized by the European Commission, or for which the authorization by the European Commission is required, on the basis of Sections 3.1 ("*Limited amounts of aid*") and 3.12 ("*Aid in the form of support for uncovered fixed costs*") of the European Commission Communication

of 19 March 2020 C (2020) 1863 final on the "*Temporary framework for state aid measures to support the economy in the current emergency of COVID-19*" and subsequent amendments (hereinafter *Temporary Framework*).

This clarification is finalized to permit the beneficiary enterprises of the state aids to take advantage from the higher amount of Euro 10 million provided by Section 3.12, of the Temporary Framework, in the case the amount of Euro 1.8 million provided for in Section 3.1, is not enough and therefore, jeopardizes the effective right to use the aid.

More in detail, the law provides such possibility for the following incentive:

- Non-repayable grants;
- Tax credit for rents for non-residential properties;
- Tax credit for the adjustment of workplace;
- Cancellation of the IRAP debt;
- IMU exemption for particular types of immovable property;
- Provisions on direct taxes and excise duties in the Municipality of Campione d'Italia.

It should be noted that in order to benefit of the higher amount provided by Section 3.12, a specific self-declaration shell be prepared in order to certify the existence of the conditions provided by the Temporary Framework: loss of turnover of at least 30% compared to a period of 2019, intensity of aid not exceeding 70% (90% for the micro and small enterprises) of fixed costs not covered by revenue, or losses.

The criteria, in order to be compliant with the limits and conditions of Sections 3.1. and 3.12. of the Temporary Framework, the control and monitoring procedure of the aid are delegated to a decree of the Minister of Economy and Finance.

Finally, the legislator confirms the application of the notion of "single undertaking " contained in the European regulations on "*de minimis*" state aid for the purposes of compliance with the limits provided by Sections 3.1 and 3.12.

Financial support to Large Enterprises (art. 41 of Decree-Law No. 41 March, 22th 2021, published in the official gazette on March 22th 2021)

Through the allocation of a Fund of 200 million euros for the year 2021, art. 37 integrates the available aid to large enterprises (i.e. companies with employees not less than 250 and with a turnover of more than 50 million euros or assets exceeding 43 million euros) in temporary financial difficulty due to the epidemiological emergency from Covid-19 providing for the direct granting of loans. Aid granted in the form of loans must be repaid within a maximum of 5 years.

According to par. 3, are considered to be in temporary difficulty the enterprises that have cash flows budget inadequate to meet planned obligations or that are in a situation of "difficulty" as defined in Article 2, point 18, of Regulation (EU) n. 651/2014 of the Commission of 17 June 2015, but have expectation to recovery the business. On the other hand, companies that are already in difficulty as of 31 December 2019 are excluded from the incentive.

In order to benefit of the loan the enterprises shall be reasonably able to repay the entire amount of the loan at the expiration date.

The criteria, methods and conditions for access to the incentive will be established by Decree of the Ministry of Economic Development in agreement with the Ministry of Economy and Finance within 30 days of entry into force of the Law Decree converted into Law.

Brexit

BREXIT - non-application of EU directive relief for dividends/interest/royalty

As of 1 January 2021, following the entry into force of the Brexit agreement, the Parent-Subsidiary Directive (90/435/EEC aimed at eliminating economic double taxation of dividends between parent companies and subsidiaries in the EU zone) or the partial WHT exemption provided for in Article 27, paragraph 3-*ter* of Presidential Decree n. 600/73, or the Interest and Royalties Directive (2003/49/EC which provides for exemption from tax on interest and royalties paid to entities resident in EU Member States) will no longer be applicable. However, the double tax treaty signed with United Kingdom remains in force.

Brexit, VAT registration in Italy for UK established entities - Resolution no. 7/E, dated February 1, 2021

Italian tax authorities ("**ITA**") confirm that UK-established businesses may continue to register for VAT in Italy through "direct VAT identification," as an alternative to the appointment of an Italian fiscal representative.

Thus since the protocol annexed to the EU-UK trade and cooperation agreement reached on 24 December 2020 on administrative cooperation in the field of VAT and on mutual assistance for the recovery of claims related to taxes and duties represents a legal instrument of mutual assistance that is similar in scope to EU regulations in the field.

In addition, UK businesses that already are VAT registered in Italy (either through the appointment of an Italian fiscal representative or through a direct VAT identification process) may continue to use existing Italian VAT registration numbers granted prior to 1st January 2021. Therefore, UK entities asking for an Italian VAT registration may choose the option preferred (direct VAT identification or VAT representative).

Brexit and Trade and Cooperation Agreement ("TCA")

From 1 January 2021 the United Kingdom is no longer part of the customs and tax territory (VAT and excise duties) of the European Union, but it is to be considered, to all intents and purposes, a third country: from that date, customs procedures and formalities are applied to the circulation of goods between the UK and the EU, as well as customs tariffs and commercial policy measures, according to the respective regulations. However, in accordance with the Protocol on Ireland and Northern Ireland, EU customs rules and procedures continue to apply generally to goods entering and leaving Northern Ireland, despite being part of the customs territory of the UK.

On 24 December 2020, the negotiations - started on the basis of the Council Decision (EU, Euratom) 2020/266 of 25 February 2020 - for a new partnership agreement with the United Kingdom and Northern Ireland were also concluded. They had the objective of signing a free trade agreement without tariffs and quantitative restrictions, which included clear provisions for the protection of equal conditions (so-called "level playing field") in the field of competition, state aid, taxation, environment, employment and social aspects. The Trade and Cooperation agreement between the EU and the UK ("TCA") resulting from those negotiations is provisionally applied from 1 January 2021 until 30 April 2021 (provisional application originally agreed until 28 February, extended to allow sufficient time to complete the legal-linguistic revision of the agreement).

Therefore, although the EU and the United Kingdom are no longer part of the customs union, they recognize themselves as privileged trading partners under the TCA. The main effect is the mitigation of customs and procedural impacts normally applicable in trade with

third countries, under the TCA rules that establish that all EU or UK goods are not subject, in principle, to customs duties or quotas to import into the territory of the other Party, provided that they are "originating" from the EU or UK, pursuant to the provisions of Part II, Title I, Chapter 2 (so-called "preferential" origin of the goods).

In this context, on 30 December 2020 the Italian Customs Agency issued circular No. 49 to "*facilitate the fulfillment of customs formalities - especially for economic operators who in international trade have been most interested only or mainly in intra-union movements and which, also in light of the agreement reached between the EU and the UK on 24 December 2020, are preparing to operate on non-EU market* ". The most interesting aspects of the Circular include: 1) the reference to the provisions of the Agreement on proofs of preferential origin, i.e. the "*declaration of origin*" of the exporter on an invoice or other commercial document (only if registered in the "REX" system for shipments of value more than EUR 6,000) or the "*knowledge of the importer*" about the origin of the product; 2) the possibility of obtaining authorization for export customs clearance at an "approved place" requesting for a simplified inspection; 3) reference to the main criterion of submitting the customs declaration to the competent customs office based on the place of establishment of the exporter "*except for specific situations*"; 4) the possibility for exporters to place goods destined for the United Kingdom under the common transit procedure (as a result of the Convention on Common Transit in force since 1 January 2021), so as to be able to carry out customs formalities at an internal customs office with shorter times than those usually required at the customs offices located near the borders.

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