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Direct Tax

Tax ruling n. 251 dated 05.10.2022 | Subject: Access to the tax neutrality regime for a contribution of business unit from an Italian permanent establishment of a foreign entity to an Italian NewCo

The Italian Tax Authority (hereinafter "ITA"), through the answer to tax ruling no. 251 dated May 10, 2022, has confirmed its position on the possibility of subjecting to the tax-neutrality regime (according to articles 178 (1), lett. c) and 179 (2) of IITC) a business unit contribution from an Italian permanent establishment (hereinafter "PE") of a non-resident entity (in this case, a bank with registered office in the United Kingdom) to an Italian company. The principles stated by ITA in this ruling are essentially consistent with those expressed in the response to tax ruling no. 164/2022, according to which tax-neutrality regime is conditioned on the inclusion of the participation in the transferee company in the accounts of the surviving Italian permanent establishment, which has to be evaluated according to a substantive approach and not, therefore, merely related to accounting data.

The operation under discussion, concerned the incorporation by a UK parent company, through its Italian PE, of an Italian company. Subsequently, the NewCo would have received the (bank) business unit from the Italian permanent establishment, issuing in exchange to this latter a participation in its share capital. This participation would have been accounted by the PE as a financial fixed asset (in its own "local" Financial Statement).

After confirming the tax neutrality regime for the transaction at hands, however, ITA has identified certain conditions which must be respected to access to this regime. First of all, the participation must be accounted in the same entity from which the business unit has been transferred (i.e. the PE). Moreover, ITA highlighted that "*the assignment [...] of the participation among the permanent establishment's assets arising from the Contribution remains, however, conditioned by the general provision of the existence of a functional connection between the participation and the assets of the PE*" (i.e. according with the so-called "functionally separate entity approach" OECD principle). On the contrary, as clarified by the Italian Revenue Agency, whether such participations are directly assigned in the parent company's account (or first assigned to the contributing PE and then transferred to its parent company), the shares are considered as "sold" and then Italy is entitled to tax any potential capital gain pursuant to Article 166 of the IITC concerning the so-called "exit tax".

OIC | Italian standard setter

The Italian standard setter (OIC) has updated the set of Italian GAAP in order to adopt the requirements introduced by the Law 23 december 2021, n. 238.
Modifications introduced are related to:

- Prohibition for investment entities and holdings to benefit of simplifications reserved to micro-entities ex art. 2435-ter;
- Obligation to present in the notes the disclosure about amounts object of compensation (when compensation is permitted by the law or the GAAP).

These modifications imply that:
- investment entities and holding are now obliged to recognize derivatives in the balance-sheet and to measure them at fair value;
- entities that have received government grants related to intangible assets are obliged to disclose in the notes separately the cost of intangible assets acquired and the grants received.

Italian Tax Authority, advance tax ruling n. 272, May 18th, 2022

The provision for environmental recovery is not tax deductible if it is uncertain when the related expense will actually be incurred.

The facts represented by the taxpayer regards a company involves in the photovoltaic production activities which has signed an agreement with the Gestore dei Servizi Energetici (GSE S.p.a.) that provides for the recognition of an incentive fee which will be paid for a period of 20 years.

The taxpayer pointed out that "upon the expiration of the Agreement with GSE Spa, at the end of production, the company has the obligation to dismiss the plant and restore the places in which the plant currently stands [...]", bearing the related costs.

The taxpayer states that the costs related to decommissioning of plants and environmental reinstatement can be consider as certain costs and, therefore, he would like to estimate them through an expert's appraisal and allocate them in relation to the remaining tax periods of the agreement. The provision for "Environmental Recovery Risk Fund" should be considered as deductible for CIT and IRAP (Regional tax on productive activities) purposes.

However, the Italian Tax Authority clarified that the Agreement entered into with the GSE does not provide for the production activity termination date and thus the end of plant decommissioning and environmental reclamations.

In other words, although the company is obliged to incur plant decommissioning and environmental reinstatement costs at the end of the activity, it lacks the requirement of certainty as to when the costs will actually be incurred. Therefore, according to the Italian Tax Authority, these costs cannot be considered deductible for IRES and IRAP purposes. The case at hand would fall under Paragraph 4 of Article 107 of the Italian Income Tax Code.

Finally, the Italian Tax Authority points out that the same conclusion also applies if the provision was classified under items other than B.12 and B.13, and in any case, such costs will be deducted when the provision is utilized.

Italian Tax Authority, advance tax ruling n. 305, May 26th, 2022

The disposal of a company constitutes for the seller an act of realization of the transferred business that allows the buyer to register the company at the transfer price paid. Upon the sale of a business, there is no succession by the buyer in the tax values of the seller and, if the conditions are met, the buyer may record the transferred provisions granting them full tax relevance.

The fact represented by the taxpayer is related to a business acquisition transaction in which the transferred items include a number of provisions for risks and charges.

According to the taxpayer, these provisions would represent "deducted" provisions since they were included in the determination of the tax-recognized value of the transferred business at the time of its transfer.

In the years following the transaction, the taxpayer recorded additional provisions and such provisions were partly deducted and partly taxed.

The taxpayer asked for the following clarifications:

(i) the correct tax treatment of the utilization and releases of such provisions;

(ii) the order of priority in the use of such provision from a tax perspective.

The Italian Tax Authority points out that in principle the buyer does not succeed to the tax positions of the seller and he is allowed to record the funds for risks and charges giving them full tax relevance.

This analysis, which applies to IAS adopters as well, operates as an exception to the derivation principle (principio di “derivazione rafforzata”) and regardless to the behavior of the seller. This clarification therefore applies even in case of under common control transactions.

Consequently, the tax treatment ordinarily applicable to “deducted” funds is confirmed, since the utilization will not be subject to any tax adjustment and the releases will constitute taxable gains for both CIT and IRAP purposes.

Regarding the order of priority in the utilization, the Italian Tax Authority points out that uses and releases should be attributed in priority to "deducted" funds (cfr. Resolution No. 184/E of 2007).

Law decree “Tax simplifications” | Amendments to the so called “derivazione rafforzata” principle (full P&L relevance)

Article 8 of Law Decree n. 73/2022 extends, starting from the 2022 tax period, the full P&L relevance provided for by art. 83 of the TUIR (so called principle of “derivazione rafforzata”) also to micro-enterprises that opt for the drawn up of the financial statements in ordinary form.

For micro-enterprises, the representation of the financial statements based on the principle of prevalence of substance over form is ordinarily not relevant for the purposes of the calculation of the IRES taxable amount.

The latter, in fact, is calculated by assuming the qualifications, the temporal allocations and the classifications of the financial statements according to legal and formal criteria (the so called principle of "derivazione semplice”), a circumstance that can imply – when the substantial accounting representation is different from the legal and formal one – book to tax differences to be managed (the so called “doppio binario”), with an evident increase in administrative burdens.

The new provision, introduced by the Law Decree n. 73 in order to reduce the cases of such book to tax differences, literally modifies the mentioned art. 83 in the sense of limiting the exclusion of the mentioned principle of the “derivazione rafforzata” - already envisaged, since 2016, for all micro-enterprises - to those that have not opted for the financial statements in ordinary form. Due to reasons of equity and tax system coherence lead to believe that this simplification should also apply to micro-enterprises that choose to prepare the financial statements in an abbreviated form, cause the entities that can prepare the "abbreviated financial statements" are, on the basis of the previous formulation of the same art. 83, already allowed to apply the “derivazione rafforzata” principle.

In addition, the same art. 8 of the Tax simplifications decree has also provided that, in the event of amendment of accounting errors, the income components (excluding those for which the deadline for submitting the amended tax return

has expired) booked to equity (for "significant" errors) or to P&L (for "not signifcant" errors) are relevant for tax purposes. Therefore, these income elements are included in the calculation of the result of the tax period in which the error is amended (such principle implies that the previous interpretations of the Italian Tax Authority which granted tax relevance to these components of income in the year in which they should have been correctly accounted for thought the filing an amended tax return, are not applicable anymore).

Repeal of the discipline of loss-making companies - Art. 9, paragraph 1 of Law Decree No. 73 of June 21, 2022

Article 9, paragraph 1, of Law-Decree No. 73 of June 21, 2022, established the repeal of the discipline of loss-making companies, starting from the tax period in progress as of December 31, 2022 (i.e., fiscal year 2022 for calendar-year entities).

Pursuant to Article 2, paragraphs 36-*decies* to 36-*duodecies*, of Law-Decree No. 138 of August 13, 2011, the rules on shell companies, as set forth in Article 30 of Law No. 724 of December 23, 1994, also applied to loss-making companies, i.e., those with five tax loss years or four tax loss years and one with taxable income lower than the amount of the minimum presumed income established for nonoperating companies.

This regime implies that the loss-making companies qualified as a nonoperating company:

- had to report a minimum income not less than that resulting from the application of "legal" percentages to the value of the assets/right indicated in Article 30 above (so-called "operating test"), both for IRES and IRAP purposes;
- had to apply an IRES rate surcharge of 10.5 percent;
- had to use carry-forward tax losses as a deduction only for the portion of taxable income exceeding the presumed minimum income;
- could not apply for a refund of VAT credit or offset the credit against other taxes/social security contributions. In addition, in the event that a company (i) was considered shell company for three successive tax years and (ii) in all three of the aforementioned years had carried out VAT transactions that are less than the presumed minimum income, that company could not be able to offset the excess credit against its VAT liability for subsequent tax periods.

In view of the repeal of the discipline of loss-making companies, as of fiscal year 2022 (i.e., tax period in progress as of December 31, 2022), the aforementioned limitations will no longer apply.

As can be seen from the explanatory report, the effective date of the repeal is consistent with the substantive and not procedural nature of the discipline that is intended to be repealed, which, will continue to apply to entities that as of December 31, 2021, have accrued the five-year tax loss period.

IRAP return simplifications - Article 10 of Law Decree No. 73 of June 21, 2022

Article 10 of Law Decree No. 73 of June 21, 2022, provided for certain simplifications regarding IRAP returns. These changes are already applicable starting from the tax period prior to the one in progress on the date of the Decree's entry into force (i.e., fiscal year 2021 for calendar-year entities).

The purpose of this provision is to remove "partial" deductions of costs related to employees hired on a long-term basis with the introduction of full deduction of such costs.

In light of the above, with the new provision:

- it is established that the analytical deduction of INAIL contributions, under Art. 11 paragraph 1 letter a) No. 1 of Legislative Decree No. 446/1997, is limited to employees other than long-term employees;
- the variable lump-sum deduction based on the worker's subjective characteristics, referred to in Art. 11 paragraph 1 lett. a) No. 2 of Legislative Decree No. 446/1997, is cancelled;
- the analytical deduction of welfare and social security contributions, provided for in Art. 11 paragraph 1 lett. a) No. 4 of Legislative Decree No. 446/1997, is repealed;
- it is clarified that the deduction from the taxable base, amounting to 1,850 euros, on an annual basis, due to entities with positive elements that contribute to the determination of the value of production not exceeding 400,000 euros in the tax period, provided for by Art. 11 paragraph 4-bis.1 of Legislative Decree No. 446/1997 applies for each employee other than long-term employees hired in the tax period up to a maximum of 5;
- the deduction for the increase in the occupational basis, referred to in Art. 11 paragraph 4-quater of Legislative Decree No. 446/1997, is cancelled;
- paragraph 4-septies of Art. 11 of Legislative Decree No. 446/1997 is rewritten; according to the new wording, for each employee the amount of deductions allowed by paragraphs 1 and 4-bis.1 cannot, however, exceed the maximum amount accounted for by the employer's salary and charges;

- the deduction of the excess cost of long-term employees, provided for in Art. 11 paragraph 4-octies of Legislative Decree No. 446/1997, is revised.

On the other hand, the special deductions currently in force referring to contractual forms other than long-term employee relation, such as research and development workers not employed on an long-term basis, trainees, the disabled and seasonal workers, are confirmed.

With reference to employees hired on a long-term basis, there are no particular material effects regarding the determination of the tax basis for IRAP purposes; as a matter of fact, under the previous provision, the cost incurred for employees hired on a long-term basis was considered fully deductible through the so-called "residual deduction," calculated as a difference from what had already been deducted through the special deductions provided for in Art. 11, Legislative Decree No. 466/1997.

The change is part of a simplification process in the determination of the IRAP tax basis and in the filling out of the tax return forms already starting with the IRAP 2022 return.

In view of this, it is recommended that the Tax Administration update the forms.

Repeal of IRES surtax for highly capitalized companies operating in the oil and energy sectors - Article 9, paragraph 2, of Law Decree No. 73 of June 21, 2022

Law Decree No. 73 of June 21, 2022, Art. 9, paragraph 2, provided for the repeal of the IRES surtax for highly capitalized companies operating in the oil and energy sectors.

The surtax equal to 4% was introduced by Art. 3 of Law 7/2009 and was applicable to resident companies and commercial entities:

- that were engaged in the exploration and production of liquid and gaseous hydrocarbons, with controlling and associating interests and with net tangible and intangible assets allocated to this activity with a book value exceeding 33 percent of the corresponding balance sheet item;
- issuing shares or equivalent securities admitted to trade on a regulated market;
- with capitalization exceeding 20 billion euros.

The surtax should have been applicable until the current fiscal year as of December 31, 2028 (i.e., 2028 for calendar-year entities); as a result of the changes , the surtax is no longer applicable as of the current tax period as of December 31, 2021 (i.e., fiscal year 2021 for calendar-year entities).

Italian Revenue Agency - Ruling n. 115/2022 – Inherence requirement of the costs relating the business activity. Cash boost granted to customers

The ruling has been filed to the Italian Revenue Agency by an Italian company (hereinafter “the Company), dealing with in the field of financial and payment services, which issued credit cards towards its customers (hereinafter “Credit card owners”) upon specific request made by them.

From the business activity run by the Company mainly arise the following kinds of revenue: (i) fees on the expenses made by the Credit card owners (ii) yearly subscription fees paid by the same owners.

That said, since Covid 19 pandemic involved a decrease of both of the aforesaid kinds of revenue, the Company, in order to limit such a decrease and preserve the business contact with part of the Credit card owners (hereinafter Z Credit card owners), opted for granting to the owners concerned, upon specific conditions and limited to the FY 2020, an *una tantum* cash boost.

That being premised, the question raised by the Company has been the deductibility or not, for income tax and Irap purposes, of the cost that it suffered in connection with the boost granted to the Z Credit card owners, classified, in the P/L account drafted according to the Bank of Italy’s guidelines, among the “Other administrative expenses”.

The Italian Revenue Agency, focusing on the inherence of costs requirement, argued that, pursuant to art. 109, par. 5, of the Italian Income tax Code, are generally inherent to the business activity the costs geared to generate, also potentially, taxable revenues.

Therefore the Italian Revenue Agency considered as deductible the boost at hands essentially affirming that the terms and circumstances of the related granting seem potentially fit to increase the aforesaid kinds of revenue.

As far as Irap is concerned, the Italian Revenue Agency, reminding to the Circular Letter of July 16th 2009, n. 36/E, firstly argued that, according to the principle of direct derivation of the Irap taxable basis from the P/L items, the existence of the inherence requirement takes an important role already for accounting purposes where it allows the allocation to the P/L account of the costs incurred by a company.

The Italian Revenue Agency finally precised that to the cost concerned is applicable the threshold of deductibility sets forth by art. 6, par. 1, lett. c), of Legislative Decree n. 446/1997 according to which the "administrative expenses" are relevant for Irap taxable base of banks and other financial entities within the 90% of their amount.

Supreme Court September 30th 2021, n. 24154 – Inherence requirement of the costs relating the business activity. Fee for leasing of helicopters

In the case at hands the Italian Revenue Agency issued a notice of assessment challenging, inter alia, the lack of inherence, according to art. 109, par. 5, of the Italian Tax Code, of fees for leasing of helicopters and the lack of inherence of the VAT paid by the taxpayer (hereinafter "the Company") to the supplier.

The regional Tax Court of Toscana, modifying the sentence issued by the first tier Tax Court favorable to the Agency and partially overruling the notice of assessment, judged as not proved the challenging concerned arguing that the Agency would have justify its point demonstrating a use of the helicopters different from the business one and not, on the contrary, focusing on the lack of revenues realized by the Company.

The Supreme Court rejected, on this point, the sentence of the Regional Court essentially arguing the wrong application of the rules related to the burden of proof.

Consequently, the Supreme judges, returning the sentence to the same Court for the reconsideration of the said rules, affirmed the following principles.

The judges firstly argued that the burden of proof related to the inherence of the costs is on the enterprise and not on the tax authorities.

Consequently, as far as the content of the burden proof is concerned, the Supreme Court, according to its main jurisprudence, reasserted that the principle of inherence:

- does not arise from art. 109, par. 5, of the Italian tax Code, which relates to the different matching principle between deductible costs and taxable revenues, but must be appreciated by a qualitative assessment without considering the usefulness and advantage concepts, which regard, on the contrary, the quantitative assessment;
- must be kept apart from the concept of congruity even if this one could be seen as a signal, in certain cases, of a lack of inherence.

90day suspension deriving from a settlement agreement procedure – Supreme Court rulings No. 15430 and No. 15433 of 13/05/2022

With the twin judgments No. 15430 and No. 15433 of 13 May 2022, the Italian Supreme Court stated that the presence of a public holiday at the end of the 90day suspension period, deriving from an application for the settlement agreement procedure, does not lead to the postponement to the first non-bank holiday day pursuant to Art. 155 of the Italian Trial Civil Code for the purpose of identifying the *dies a quo* of the term to file the appeal.

Starting from the rationale underlying the fourth paragraph of Art. 155 of the Italian Civil Procedure Code i.e. that of "*allowing the holder of the right or faculty an extreme act of exercise that would not be possible if the last day falls on a bank holiday day*", the Supreme Court has, in particular, stated that the 90day suspension to file an appeal challenging a tax assessment provided for by Art. 6 of Legislative Decree No. 218 of 19 June 1997 as to the settlement agreement procedure, having the purpose of guaranteeing a concrete *spatium deliberandi* in view of said procedure, has an administrative nature, with the consequence that the purpose of guaranteeing a concrete decision-making space for the settlement agreement, does not make the last day of the *spatium deliberandi* a deadline, the expiry of which causes the acquisition or the loss of a right or the forfeiture of the exercise of a faculty.

As a result, the Supreme Court affirms that the guarantee for the taxpayer to have a concrete *spatium deliberandi* of 90 days in view of the settlement agreement, does not entail that, if the ninetieth day falls on a bank holiday day, the expiry of the suspension period is extended to the first following non-bank holiday day.

Beneficial ownership within the meaning of the Interest and Royalties Directive – Ordinance of the Italian Supreme Court no. 3380 of February 3, 2022

The Italian Supreme Court released an interesting decision regarding the interpretation of beneficial ownership concept in the context of the Interest and Royalties Directive.

The case concerned an Italian company which drew down debt financing from certain U.S. investors via a Luxembourg subsidiary and which applied the withholding tax exemption set forth by Article 26-*quater* of Presidential Decree No. 600 of 1973 on the interest payments performed to this Luxembourg company which, in its turn, repaid these items of income to the U.S. lenders without any mark-up and without applying any withholding tax (due to the application of the relevant double tax treaty).

Under such scheme, the Luxembourg subsidiary was in a perfect back-to-back position since the loan granted to its Italian parent (which was unable to directly obtain financing from the U.S. lenders) reproduced the same terms and conditions of the bond subscribed by the U.S. investors (same tranches, at the same rate, with the same maturities, for the same amounts and via the same credit institution).

After reiterating the principle based on which the beneficial ownership of pure holding and sub-holding companies should not be assessed by having regard to elements characterizing the financial features of operating companies (by giving prominence, for example, to a low amount of operating credits, to the lack of employees and to an insignificant organizational structure), the Italian Supreme Court established that the organizational and managerial autonomy of a pure holding or sub-holding company should be assessed considering the activities set out in its articles of association (e.g., the mere holding and financing of participations).

Based on the above, the Court held that the beneficial ownership of the Luxembourg subsidiary could not be denied in light of the following elements:

- its "substance" and presence in Luxembourg for more than 50 years;
- its corporate purpose consisting of holding shares in companies performing the same activity carried out by the Italian operating company;
- the issuance of the bond subscribed by the U.S. lenders six months before the issuance of the bond by the Italian parent company as this latter was unable to directly draw down debt financing from the U.S. investors (i.e., the two debt instruments are autonomous from one another and have different underlying justifications);
- the achievement of profits for an amount of EUR 8 million in the relevant tax period;
- the autonomous underlying justification of the back-to-back loans;
- the circumstance that the Luxembourg subsidiary was fully subject to Luxembourg taxation on interest income;
- the economic ownership of the relevant items of income and the absence of contractual obligations to repay these proceeds to the U.S. lenders;
- its assets were placed as collateral for the U.S. investors.

In its decision, while referring to the principles formulated by the CJEU in the context of the well-known "Danish cases" (i.e., Joined Cases N Luxembourg 1, C-115/16; X Denmark A/S, C-118/16 and Z Denmark ApS, C-299/16) the Italian Supreme Court seems to go even further by excluding that the absence of a mark-up on the interest income derived by the Luxembourg subsidiary on the interest expenses borne by this latter and accrued on the bond subscribed by the U.S. lenders could jeopardize the beneficial ownership position of the interposed vehicle. Nevertheless, the conclusions of the Italian Supreme Court should not be overstated and should be appreciated considering that, in the case at stake, the interposition of the Luxembourg subsidiary was necessary due to the impossibility for the Italian parent company of directly drawing down debt financing from the U.S. investors.

New Clarifications on the Patent Box

Agenzia delle Entrate, Answers in the 'Telefisco' event of Il sole 24 Ore

The Italian Revenue Agency provided clarifications on the new patent box during the 'Telefisco' event of Il Sole 24 Ore.
First of all, it deals with assets, acquired from 2021 onwards, that are complementary to other assets for which the option for the old patent box is still valid, for which the Provision of the Director of the Revenue Agency of 15 February 2020 at paragraph 12.5 expressly provides that: "Contributors may not exercise the PB option, even with respect to complementary assets, as of the tax period in progress as of 28 December 2021".
For these assets, the new version of the patent box can be adopted; the coexistence of two different regimes is not a problem.
The Agency also confirms that the new patent box does not incorporate any of the previous rules, including the possibility to carry forward losses generated by a single asset. Therefore, in the event of a negative contribution calculated under the old regime, if the company opts for the new one, it will not have to take these losses into account.
It is then clarified that the penalty protection, i.e. the rule that excludes the application of penalties in case of incorrect determination of the benefit on the basis of a correct documentation, only applies to the patent box and cannot be extended to the controls related to the research and development tax credit.
Finally, it should be noted that the new Patent Box does not cover patents 'in the course of being granted' for which the industrial property right has not yet been issued.
If, however, the patent is granted in 2021 (or in the following years), in addition to the increased costs for the period, the rule that allows the costs of the previous eight years to be recovered is also triggered, unless the assets have already benefited from the patent box (since the bonus in the previous version also covered patents in the course of being granted).

The contribution of participations may reduce the tax burden on dividends

Agenzia delle Entrate n. 215/2022

The case under question concerns dividend tax planning. In particular, an individual holds the control of a company with liquidity and profit reserves, but at the same time plans to start a new activity through a new company (newco). Two operational paths are envisaged to avoid the maximum tax cost (given by the taxation of the dividends in the hands of an individual who subsequently has to inject the liquidity into the newco):
- contribution of the old company into the newco;
- contribution of both companies into a holding company.
In both hypotheses, the requirements to benefit from the neutrality regime provided by Article 177 of TUIR are configured. As regards the abuse of law, which is the subject of the interpellation, the Revenue Agency considers this risk to be absent in view of the fact that the new companies carry out a real entrepreneurial activity.

Unsuccessful Debt Collection: Lawyer's Letter not sufficient to deduct loss

Supreme Court, Judgment 21.4.2022 No. 12693

Case law has in the past emphasized that, for the purposes of the possibility to deduct credit losses based on certain elements, if the creditor remains inactive in the ownership of his claim, there is only an unenforceable claim due to the creditor's will, but there are no "certain" elements to configure a tax-relevant loss (see Court of Cassation No. 4567/2019). In the present case, the appellate court had held that the taxpayer company had unsuccessfully pursued all sorts of recovery actions and referred to the jurisprudence of legitimacy (Cassation 3862/2001) which valorized the letter of a lawyer attesting the unenforceability of the credit, as the taxpayer company had evidently demonstrated the losses deducted.
The Court of Cassation's ruling, on the other hand, upholds the Tax Administration's argument, according to which it cannot be held that, where for a receivable it appears that the recovery action carried out by a lawyer has been unsuccessful, so much so that the lawyer formally expresses the opinion that the receivable is unrecoverable, there are certain and precise elements of the loss of the receivable; on the contrary, in order to have such elements, are also required one or more circumstantial evidence that the recovery action has been adequately carried out and that the opinion of unrecoverability of the receivable is accurate.

FTA of derivative financial instruments | Italian Revenue Agency's Answers n. 114 e 116 of 2022

Regarding the transition to the international accounting standards IAS/IFRS (First time adoption or FTA), the Italian Revenue Agency has recently issued two interesting replies to rulings - published on March 15, 2022 - which deserve to be commented, concerning the tax treatment of derivative financial instruments.

The issue essentially relates to the possibility of giving tax relevance to the balance sheet items booked to equity due to the transition to IAS/IFRS and referring to derivative financial instruments not accounted for in the pre-transition regime.

With the Answer n. 114, the Italian Tax Authorities recognized the fiscal significance of the first registration (at fair value) of a put option on non-hedging shares (speculative derivative) recognized as a counter-entry to an equity investment (the aforementioned fiscal significance was evident in the value of the equity investment).

With the Answer n. 114, the Tax Authorities recognised relevant for tax purposes the first registration (at fair value) of a put option on non-hedging shares (speculative derivative) recognized versus an equity investment (the aforementioned fiscal relevance was granted to the value of the equity investment itself).

The subsequent Answer n. 116 confirmed, always in relation to a put option on shares, this approach as a result of the combined provisions of Articles 83 and 112 of the TUIR, with consequent tax recognition of the fair value of the financial instrument.

Both answers, in essence, state that the tax neutrality regime typical of the transition to IAS/IFRS is not applicable to the FTA of derivatives (since there is no hypothesis of "anomalous taxation"); the values recorded in the FTA are tax relevant even if with different accounting evidences (as an asset in the first case and as a negative income element in the second one).

Indirect Tax |VAT

VAT clarifications provided by Italian tax authorities – telefisco meeting held on June 15, 2022

Official clarifications related to electronic invoice, VAT compliance, so called "ravvedimento operoso" and penalties – Special edition of "telefisco" of June 15, 2022

As part of the Telefisco Special edition, Italian Tax Authorities provided important clarifications on *electronic invoice, VAT compliance*, so called "*ravvedimento operoso*" and *penalties*. Please find below a summary of the clarifications at stake.

- Taxpayers under the forfait regime
  - *Electronic invoice technical specifications* - It is confirmed that for the correct filing of electronic invoices the tax payer subject to forfeit regime, should indicate the code "RF19" in field 1.2.1.8 <RegimeFiscale> of the Xml file and nature code "N2.2" in field 2.1.1.7.7 <Natura>. Furthermore, it is confirmed that the "Stamp Duty Payment" service available in the "Invoices portal – so called "portale Fatture e Corrispettivi" will show list (list A) of invoices in which the subject has indicated the application of the stamp duty (2.1.1.6.1 <BolloVirtuale>) as well as list (list B) of invoices that meet the criteria for which the stamp duty has to be paid.
  - *Verification of the limit of 65.000 euro to apply the forfait regime* – The Tax Authorities makes available to the taxpayer, in the "Invoices portal – so called "portale Fatture e Corrispettivi", a summary data of electronic invoices issued and received. This will enable the taxpayer to check whether the 65.000 euro limit established by the forfait regime has been exceeded.
- Variation notes
  - *Partial debit note* - art. 18 of Law Decree No. 73 of 2021 so-called (Decree Sostegni-bis) amended the provisions of art. 26 of Presidential Decree no. 633/1972, whereby the credit note may be issued starting from the date in which the purchaser is subject to insolvency proceedings. However, with specific reference to bankruptcy proceedings, in par. 3 of circular letter no. 20/2021 of Italian tax authorities, it was clarified that the amount of the consideration invoiced by creditors to be paid by debtors subject to such proceedings is specifically identified from the admission decree. Therefore, the creditor can issue a credit note for the portion of the unpaid debt meant to remain unsatisfied, according to the percentages defined by the procedure;
  - *Variation notes - taxable amount and VAT* - Italian tax Authorities clarify that the variation note in case of bankruptcy proceeding cannot be issued only for the VAT amount, but it must be issued both for the taxable amount and for the VAT part (it is possible to raise credit notes only for the VAT amount in cases in which the VAT rate has been wrongly applied on the invoice). Therefore, if - despite the fact that a variation note on the consideration has been issued - the bankruptcy administrator decides to post as a liability only "the amount relating to the taxable amount" the creditor who is satisfied - in whole or in part - with his credit, must issue the credit note proportionally dividing the amount received between taxable amount and VAT (Resolution No. 127/2008; Ruling answer No. 801/2021).
- *Non-deductible VAT and declarations of intent* - Circular no. 145/1998 specified that goods and services for which VAT is non-deductible, according to art. 19 of Presidential Decree no. 633/1972, cannot be purchased without VAT application according to the habitual exporter procedure of the plafond use. Therefore, it has been clarified which is the procedure for amending the invoice received without charging VAT, according to art. 8, para. 1(c) of Presidential Decree no. 633/1972, in the case of issuing declarations of intent to suppliers who invoice transactions that are non-deductible for the habitual exporter. It has been confirmed that for the incorrect use of the plafond to purchase goods and services with non-deductible VAT the penalty provided by art. 7, par. 4, of Legislative Decree no. 471/1997 applies [i.e. from 100% to 200%] with the possibility of applying the reductions provided by Art. 13 of Legislative Decree No. 472/1997.
- *VAT violations and voluntary disclosure with penalties' payments* –
  It has been asked clarification for application of penalties linked to unfaithful VAT return after what has been reported in Circular no. 42/2016 of Italian tax Authorities.
  In Circular no. 42/2016 Italian tax Authorities clarified that after 90 days from the deadline to submit the VAT Return, the taxpayer that submitted a wrong VAT Return needs to submit an Integrative VAT Return and pay the eventual VAT due plus penalties related to unfaithful VAT return and interest; penalty related to unfaithful VAT return absorbs the one provided for omitted VAT payment. Penalties for omitted invoicing are autonomously due and payable. Therefore, when the taxpayer wants to regularize its position through the voluntary disclosure regime provided by art. 13 of Decree no. 472/1997, it should pay: (i) unfaithful VAT return that absorbs the omitted VAT payment, plus the violations occurred before the unfaithful VAT return (e.g. omitted invoicing). The clarifications provided by Circular no. 42/2016 are still valid.
  If the violation of omitted VAT payment is regularized within such 90 days, both penalties for omitted invoicing and omitted VAT payment must be paid, after such 90 days, the clarifications provided above by Circular no. 42/2016 remain still valid.

- "Ravvedimento operoso" and Amended VAT Return- Italian Tax Authorities clarify that, according to art. 8, par. 6-bis, of Presidential Decree no. 332/1998 and art. 1, par. 640, of Law no. 190/2014, it should not be possible to submit an Integrative VAT Return to adjust a previous Integrative VAT Return submitted with payment of penalties according to the voluntary disclosure regime. The only possible thing is to regularize amendment that concern the VAT Return originally submitted, without any regularization carried out on them.

Law Decree No 73/2022

Package of provisions related to financial and social simplification – Law Decree no. 73 dated June 21, 2022, so called "Decreto semplificazioni" – published on the official Gazette no. 143 of June 21, 2022

Law Decree no. 73/2022 (so called "Decreto Semplificazioni") is introducing some changes in the field of VAT. Please find below a brief summary of the news relevant for VAT purposes:

- Timing for filing Intrastat Forms: The parties required to submit the lists of intra-Community supplies and purchases (both for ones submitted on a monthly and quarterly basis) must submit the data by the end of the month following the reference period (i.e., last day of the following month and no longer by the 25th day of the following month);
- Timing for filing the communication of periodical VAT computation for the second quarter: The communication of VAT calculations for the second quarter must be made by 30th September of each year, instead of the current deadline set on 16th September;
- E-invoices stamp duty: art. 3, par. 4 of Law-Decree at hand amends art. 17, par. 1-bis, lett. A) and B) of Law-Decree no. 124 of 26th October 2019, increasing the threshold for the payment of the second quarter (from 250 to 5.000 euro). Following the amendment, with reference to the stamp duty due on e-invoices, starting from 1st January 2023:
  - whether the stamp duty amount to be paid on e-invoices issued during the first quarter of the year does not exceed the amount of 5.000 euro, the stamp duty could be paid within the same deadline of the VAT payment of the second quarter (i.e. 30th September);
  - whether the stamp duty amount to be paid for e-invoices issued during first and second quarters does not exceed the total amount of 5.000 euro, the stamp duty could be paid within the same deadline of the VAT payment of the third quarter (i.e. 30th November).
- Esterometro: art. 12, par. 1 of Law-Decree rewrites art. 1, par. 3-bis, of Legislative Decree no. 127 of 5th August 2015, providing that, for the goods and services purchases out of Italian VAT scope which amount do not exceed 5.000 euro, is no longer mandatory the telematic submission to Italian Tax Authorities. Following the amendment, the submission of the Esterometro form is no longer mandatory for:
  - all the transactions for which has been issued a customs bill;
  - all the transactions for which has been issued or received an electronic invoice through SdI;
  - cross-border transactions out of Italian VAT scope which amount is lower than 5.000 euro.

  The telematic submission should be performed on a quarterly basis and within the end of the month following the related quarter. With reference to the transactions carried out towards and received from foreign entities (starting from 1st July 2022) the data should be submitted with the telematic procedure through SdI. In relations to the same transactions:
  - the telematic submission of the data related to output transactions carried out towards subjects not established in Italy should be performed within the deadline for the submission of the invoices/documents attesting the transaction;
  - the telematic submission of the data related to input transactions received from foreign subjects should be performed within the 15th day of the month following the one in which the document attesting the transaction is received.

  Furthermore, art. 13, par. 1 postpones the starting date for the application of penalties due for the omitted or wrong submission of the invoices related to the cross-border transactions (now deferred to the 1st July 2022, in place of the initial date of 1st January 2022).
  - Deadline for registration request of the fixed-term acts: art. 14, par. 1 of Law-Decree at hand amends art. 13, par. 1 and 4, of Presidential Decree no. 131 of 26th April 1986, providing that the registration tax should be requested within 30 days starting from the deed itself – if performed in Italy – in place of the previous 20 days.
  - Amendments to the VAT regime applicable to the supply of services provided to inpatients and their companions: art. 18 of Law-Decree at hand amends the VAT regime established by art. 10, par. 18 of Presidential Decree no. 633/1972, providing that the VAT exemption could be applied also to health services which constitute part of an hospitalization and treatment service provided to the patient by entities different

from those provided in art. 10, par. 19 of the same Decree, when the patient purchases the service from a third party. Should this be the case, the VAT exemption could be applied to the hospitalization and treatment service up to the consideration due by the patient to the third party. Furthermore, the hospitalization and treatment services – including the accommodation – to which it could not be applied the VAT exemption, should be subject to reduced VAT rate at 10%.

- **Deferment of Reverse charge mechanism:** art. 22 of Law-Decree at hand amends art. 17, par. 8, of Presidential Decree no. 633/1972, extending the reverse charge mechanism to the electronic and energetic sector up to 31st December 2026.

Indirect Tax | Customs

AIDA Reengineering: new declaration systems and accounting requirements for imports

In the context of the AIDA reengineering process, with **Circular 22/2022 of June 6**, the Italian Customs Agency provided clarifications regarding the **new "shape" of customs declarations** and the new declaration systems for imports.

In detail, the Circular provided guidance in relation to: the possibility of **lodging a customs declaration prior to the presentation of the goods; filling the "H" data record of the declarations; customs warehouse declaration; DV1 and customs value; modes for the release of the goods; settlement and payment of customs duties; amendments of customs declarations; penalty regime; and management of the "new" customs documents**.

Moreover, the Agency clarified a fundamental point concerning the registration of the import bill in the VAT purchase register for the purposes of VAT deduction on the purchase.

In detail, it was clarified that, **to allow traders to fulfil their accounting and tax obligations under Art. 25 Presidential Decree 633/1972 - in order to allow traders to exercise the right to deduct the VAT paid on importation** – along with the release of the goods, AIDA will be generate an **Accounting Prospectus ("Prospetto Contabile")** for the accounting purposes of the Customs Declaration (as defined by the Directorial Determination prot. 234367 of 03 June 2022) showing, in particular, the **data relating to the payment of duty, VAT and other taxes**.

In addition to this document, AIDA will issue: the **Summary Declaration Prospectus ("Prospetto Sintetico della Dichiarazione")** containing a summary of salient data (subjective, quantitative, and qualitative data, etc.); and the **Release Prospectus ("Prospetto di Svincolo")** aimed at enabling gate control activities carried out by the relevant authorities.

The principle of proportionality in the application of customs penalties

The Italian Supreme Court **(judg. May,11th 2022, n. 14908**) has recognized the **full applicability of the European principle of proportionality, in the phase of application of the sanctions**; the value judgment concerned a dispute brought by the Customs Agency which, having ascertained the incorrect customs classification of imported products by a company, claimed higher duties amounting to €9,000 and imposed the minimum penalty provided for by Article 303 TULD, equal to €30,000. During the proceedings, the Supreme Court first of all objected that **the sums imposed as a penalty must not exceed the quantum necessary to achieve the aim pursued and**, in line with the rulings of the EU Court of Justice (C-2727/13; C-205/20), it was established that where proportionality **between the violation of the law and the penalty applied under the law is lacking, the latter must be disapplied due to its conflict with the principle laid down by the EU Fundamental Charter.**
It is therefore up to the judge, at the trial stage, the obligation to verify compliance with this principle.

Indirect customs representative is not liable for import VAT

The **Judgment of the CJEU 12.05.2022 Case C-714/20** ruled on the liability for payment of import VAT of the freight forwarder acting as an indirect customs representative. The CJEU interpreted, on the one hand, Article 77(3) of the UCC in the sense that **the indirect customs representative can only be held liable for customs duties and not also for VAT on importation and**, on the other hand, interpreted Article 201 of the VAT Directive in the sense **that the indirect customs representative cannot be recognised as jointly and severally liable with the importer for the payment of VAT**, in the absence of national provisions explicitly designating him as a debtor.

Customs value can be determined by making use of databases

The **ECJ Judgment 9.06.2022 Case C-599/20**, on the subject of **customs value**, rules on the definition of the customs value in the case of transactions between related parties and on the use of 'databases' in audits. With regard to the first aspect, **in**

the absence of proven associative relationships, two parties are considered to be 'de facto' related when one of them is 'able to exercise a power of constraint or direction over the other'.

As to the second aspect, where the transaction value criterion is effectively inapplicable and in the absence of detailed information on the goods, **the use of values extracted from databases and relating to goods having the same Taric code and origin** (fall-back method) **may be admissible**.

Excise duties: new dates settled for the entry into force of E-Das/e-AD documents

The Agency of Excise, Customs and Monopolies, with Directorial Determination 285111/RU issued on 27 June 2022, intervened on **the entry into force of the obligation to use the E-Das movement document**, depending on the types of products subject to excise duties.

Following the previous directorial determination 494575/RU of 24 December 2021, the Customs authority established:

- **the obligation to use the E-Das document, as of 1 July 2022 for the national circulation of combustion diesel, paraffin, and fuel oils** (for any intended use), **for LPG in bulk transported for predetermined loads, and other energy products** in cases where the conditions for being subject to excise duty are met. (Art. 1 c.1);
- the **postponement to 1 April 2023 of the obligation to use the E-Das** document in relation to products not mentioned above, such as **alcohols, lubricating oils, bitumen and conditioned LPG** (Art. 1 c.2);
- the **postponement to 13 February 2023 of the obligation to use the EU E-Das for the intra-Union circulation of products** already released for consumption in another Member State and delivered for commercial purposes in the territory of the State. (Art.2);
- the **postponement to 1 April 2023 of the obligation to use the e-AD document for the movement of products under suspension of consumption tax** such as, for example, lubricating oils and bitumen. (Art.3).

The customs administration, with prot. 287104 / RU, modified the Directorial Determination 138764 of 10 May 2020 with which the **obligation to use the E-Das was introduced, providing for specific additions, based on the discipline of the products** for which the document has been extended.

Global Employer Services

Extension of the Inbound special tax regime for British citizens | Italian Tax Authority Ruling n. 172 of April 6th, 2022

With the answer to the Tax **Ruling no. 172 of 6 April 2022**, the Italian Tax Authority provided clarifications regarding the possibility for British citizens who transferred their tax residence to Italy before 30 April 2019 to opt for the extension of the Inbound special regime provided for by Article 5, paragraph 2-bis of Decree-Law no. 34/2019. According to the literal tenor of the aforementioned Article 5, paragraph 2-bis, in fact, the subjective scope of the extension concerns those *"who have been registered with the Register of Italians residing abroad or who are **citizens of European Union Member States**, who have already transferred their residence before the year 2020 and who on 31 December 2019 are beneficiaries of the scheme provided for by Article 16 of Legislative Decree14 September 2015, no. 147".*

Following Brexit, in particular, the requirement relating to EU citizenship could have jeopardized the eligibility of this benefit for British citizens.

On this point, however, the tax authorities have clarified that, with respect to such persons, the EU citizenship requirement is not an obstacle to exercising the option to extend the inbound special scheme. The Brexit Agreement, in fact, at Article 12, prohibits discrimination against British citizens on the basis of their nationality and prohibits British citizenship workers from being denied the same tax benefits granted to other EU workers.

Extension of the Inbound special tax regime for the Italian citizens with no AIRE enrollment | Italian Tax Authority Ruling n. 321 of June 3rd, 2022

With the Answer to the **Tax Ruling No. 321/2022**, the Italian Tax Authority provided clarifications on the possibility, for Italian citizens who transferred their tax residence to Italy before 30 April 2019 and who, during the period abroad, were not registered with AIRE, to opt for the extension of the inbound special regime provided for by Article 5, paragraph 2-bis of Decree-Law No. 34/2019.

The case submitted to the Tax Administration concerned a non-EU taxpayer who, while working abroad, had not finalized her AIRE registration as she was not an Italian citizenship yet, although she acquired this status after transferring her tax residence to Italy and starting to benefit from the inbound special regime.

In this regard, it was reiterated that the exercise of the option governed by the aforementioned Article 5, paragraph 2 of DL 34/2019 is reserved for those who:

- during their stay abroad have been enrolled in the Registry of Italians resident abroad (AIRE) or are citizens of European Union Member States;
- have transferred their tax residence to Italy before 2020;
- already benefited from Inbound special tax regime at 31 December 2019.

This possibility is therefore not envisaged for those who were not registered with AIRE and for non-EU citizens, even if they were already beneficiaries of the inbound special regime on 31 December 2019.

Extension of the Teachers and Researchers special tax inbound regime | Italian Tax Authority Circular n. 17 of May 25th, 2022

Option to extend the special tax regime for teachers and researchers

With the Circular n. 17/E of 25 May 2022, the Italian Tax Authority provided clarifications about the option to extend the special regime provided for in Article 44 of DL n. 78/2010 for teachers and researchers who transferred their tax residence to Italy before the entry into force of the Growth Decree.

The Budget Law 2022, in fact, has introduced the possibility, for teachers and researchers who have returned to Italy for tax purposes until 2019, to opt for the extension of the application of the favorable regime for up to eight, eleven or thirteen tax periods in total, subject to the payment of an amount variable depending on the specific subjective requirements of the beneficiary.

This possibility concerns, in particular, teachers and researchers who have been enrolled in the AIRE or who are citizens of European Union Member States, have already transferred their tax residence to Italy before the year 2020 and, as of 31 December 2019, were beneficiaries of the regime provided for by the aforementioned Article 44 of Decree-Law No. 78 of 2010, provided that they have at least one minor or dependent child or purchase at least one residential property unit in Italy.

In this regard, it has been confirmed that the afore-mentioned option may also be exercised by teachers and researchers for whom the favorable regime ended in the 2019 or 2020 tax years.

However, considering that the provision set forth in the afore-mentioned Paragraph 5-ter came into force on 1 January 2022, teachers and researchers who benefited from the favorable regime until the year 2019 or the year 2020 will be able to apply the aforesaid regime only starting from the tax year 2022.

Nevertheless, the overall duration of the extended tax relief should still be in any case verified without starting from the first year of Italian tax residency.

Furthermore, it has been clarified that the amount of the contribution to be paid in order to access the extension of the incentives must be calculated on the basis of the employee's or self-employed person's income produced in Italy in the period preceding the exercise of the option, even if not facilitated pursuant to Article 44 of Decree-Law No. 78 of 2010.

Classification of carried interest for the income tax purposes | Italian Tax Authority Rulings n. 281 of May 19th, 2022 and n. 295 of May 25th, 2022

With the Answers to Tax rulings n. 281 of 19 May 2022 and n. 295 of 25 May 2022, the Italian Tax Authority provided clarifications on the taxation applicable to income deriving from financial instruments with enhanced equity rights attributed in the context of the employment relationship (*so-called carried interests*).

In this regard, it was reiterated that the absence of one of the requirements listed by Article 60 of Decree-Law No. 50/2017 does not automatically exclude the financial nature of the income in question, as it is rather necessary to conduct an analysis, to be carried out in concrete terms, to determine whether it can be recognized as employment income.

For these purposes, the presence of good or *bad leavership* clauses constitutes a useful indicator linking the income to the manager's commitment to work and therefore to the production of employment income, although it cannot be ruled out that the recurrence of other elements may point to the financial nature of the income.

Such indications may be found in particular in the following circumstances:

- the exposure to a real risk of loss of invested capital
- the congruity of the remuneration with respect to the activity performed by the employee;
- the possibility for third party investors to purchase the same financial instruments attributed to employees;

- the possibility of holding the financial instruments also after the termination of the employment relationship.

Last but not least, the Italian Tax Authority has clarified that the financial nature of carried interests may be seen also in cases where the employees are loaned sums to acquire their financial instruments, provided that these latter have to be fully reimbursed and that, as such, employees are subject to a real risk of loss of the invested capital.

Such positions have also been confirmed with the Answers to Tax Rulings n. 225, 310 and 311.

Tax Litigation

Operational guidelines and guidelines for 2022 | Revenue Agency, Circular 20.06.2022 n. 21/E

In this Circular, the Revenue Agency sets out the activities planned for 2022 according to the three usual areas: 1) prevention, fight against tax evasion, tax litigation; 2) advising activity; 3) services.

1. With reference to preventing and combating tax evasion, the Agency sets out the indications by type of taxpayer, then focusing on the activities in the field of anti-fraud and combating international offenses.

1.1. With particular regard to large taxpayers: (i) in the risk analysis can be relevant the group they belong to (see database for the years from 2014 to 2019), the collaborative behavior of the taxpayer (see the presentation of requests for ruling) and any reports of aggressive tax planning by the Analysis, Investigations and Controls Office of the Large Taxpayers Central Directorate (see tax ruling reports, country by country reports and cross-border mechanisms); (ii) among the control priorities are the claims with greater sustainability and disvalue (fraud, abuse / avoidance behavior, false offsets, undue use of facilitations), the investigations for the payment of refunds, the correct application of the tax on digital services (applied for the first time in 2020).

With regard to medium and small enterprises, the Agency dedicates a significant commitment to some cases: (i) facilitations related to the pandemic (also given the monitoring of the European Commission on State aid); (ii) offsets of tax credits and, in particular, situations of inconsistency (see incompatibility of the research and development activity, especially if internal, with the declared economic activity, the organizational structure of the company, the absence of costs for internal research and development in the years preceding the establishment of the tax credit, etc.), and spontaneous regularization of undue uses pursuant to Legislative Decree 146/2021, also in order to facilitate a quantification of the credit following the adversarial activity; (ii) under-invoicing or deductions of non-inherent costs, in the presence of some indicators such as anomalous VAT credits with respect to economic data or the sector (absence of differentiated rates between purchase and sale), purchases from subjects operating in sectors that are inconsistent with the production chain of the taxpayer, high so-called residuals costs, low or constant profitability even in face of increasing revenues over time.

With reference to natural persons, self-employed workers and non-commercial entities, some positions are highlighted such as the failure to justify anomalies, or the missing voluntary correction following letters of compliance, the receipt of foreign incomes subject to information flows from EU and OECD countries and the relevant movements of capital to and from abroad, with consequent further preliminary and adversarial activities.

1.2. As part of the anti-fraud activity, and with particular regard to sales, without charging of VAT, to false habitual exporters (by issuing ideologically false letters of intent to suppliers), through the optimization of the crossing of information in databases with electronic invoices, an automatic inhibition was developed for the release of new declarations of intent through the Agency's electronic channels and with the automated sending of warning letters to the related suppliers.

With regard to international activities, aimed at avoiding phenomena of double non-taxation and double taxation and at increasing the automatic exchange of information between the States, the Agency refers to some cases: (i) the control that the preventive agreements referred to in art. 31-ter Presidential Decree 600/1973, unilateral or bilateral, are met, as well as agreements for the determination of the relevant income for the purposes of the application of the so-called patent box (Law 190/2014); (ii) transfer pricing and the directives of the Large Taxpayers Central Directorate and International for assessment uniformity and continuation of meetings with the regional Departments on the most recurring critical issues.

1.3. In the context of litigation, in order to reduce appeals for the purposes of an effective defense of the tax/revenue interests and greater certainty, the importance of assessing acts that are difficult to defend in court is remarked, facilitating adherence to the deflationary instruments of litigation and collaboration with the taxpayer in the analysis of the arguments, for example following report on findings or requests in self-defense (to be accepted if the elements are shareable, motivated and not merely done as a pretext).

1.4. The Agency then underlines the greater commitment on the protection of the tax/revenue credit in insolvency procedures and, in particular, in the management of business crises and over-indebtedness (quantification of the tax credit not yet registered / entrusted, investigations in the arrangement with creditors and in the debt restructuring agreement) and

in the coordination, through "Regional Tables", between the collection agent and the regional management for the treatment of more complex cases.

2. With reference to the consultancy activity and, in particular, to ruling requests, some indications are given on the content, conditions and terms of presentation, with examples of case studies.

3. Finally, with regard to services to taxpayers, as part of a detailed survey of the activities carried out (assistance and information, management of tax credits and grants, notifications of irregularities, cadastral services), on the subject of reimbursements the Agency, in line with the 2022-2024 Fiscal Policy Guideline Act which places the timing of disbursement among the priority objectives, reports (i) the ongoing discussions with the MEF to accelerate the disbursement of direct tax refunds, through direct payments on the special entries of the Revenue Agency (as already happens for VAT, the payment can take place within a few days from the order, with a reduction of at least 30 days compared to the current times); (ii) in the field of VAT, the direct query of the "integrated invoice data", no longer requiring the taxpayer for documentation for the purpose of processing the refund.

Voluntary correction and "fraudulent" conduct | Revenue Agency, Circular 05.12.2022, n. 11/E

Following requests received from the operating structures of the Revenue Agency and from taxpayers, indications are provided on the possibility of regularizing violations characterized by "fraud" through Voluntary correction (Article 13 of Legislative Decree n. 472/1997), a possibility deemed precluded in the previous Circular n. 180/1998 on the basis of the wording of the law: the reference to the "regularization of errors and omissions" was intended as an exclusion from the voluntary correction of behaviors not originating from errors or omissions and, therefore, of fraudulent conduct (such as invoices for non-existent transactions).

With the Circular in question, the Agency reaches a different conclusion, deeming the previous position to be superseded in line with the legislative changes aimed (i) to expand the usability of the voluntary correction under various profiles (timing, remediable behavior, impedimental causes (see Article 13 of Legislative Decree n. 472/1997, amended by Law no. 190/2014); (ii) to introduce causes of non-punishment and criminal exemptions for some crimes following the extinction of the tax debt by payment of the quantum due (see articles 13 and 13-bis of Legislative Decree n. 74/2000, amended by Legislative Decree n. 158/2015).

The Agency therefore believes that the will of the legislator to progressively encourage the use of voluntary correction for criminal purposes has been confirmed, without any distinction regarding the alleged offense and consequent legitimation also from an administrative point of view, without prejudice to the assessments on the effects in criminal matters delegated to the Judicial Authority and remaining the obligation for the Offices to proceed with the denunciation of the *notitia criminis* pursuant to art. 331 Code of Criminal Procedure when the legal requirements are met.

Modification of the model "Application for the Collaborative compliance regime" | Revenue Agency, Provision of the Director n. 153271/2022

In continuity with the previous intervention (see Tax alert of last April), it should be noted that with the Provision under examination of last May 4, some changes were made to the Model of Application for the Collaborative compliance regime (approved with the previous Provisions n. 54237 and 54749 of 14/4/2016) in light of the changes made with the Decree of the Ministry of Economy and Finance of 31/1/2022 (which, for the years 2022, 2023 and 2024, extended the access to such regime for taxpayers with turnover or revenues of not less than one billion euro) and with the entry into force of art. 20 par. 1 of the Legislative Decree n. 119/2018 (which introduced an extension of the subjective requirements for the access to the regime, dedicated to participants in VAT groups, see art. 70-duodecies par. 6-bis Presidential Decree no. 633/9172).

Relocation abroad and tax advantage | Supreme Court of Cassation, Ordinance 11.02.2022, n. 4463

The Ordinance concerns cases in which a company, governed by Luxembourg law and carrying out administrative management and direction of shareholdings in foreign companies, was deemed *de facto* resident in Italy, with notification of an assessment notice to the Italian subsidiary.

The Court of Cassation confirmed the decision of the appellate judges who, in front of the typical evasive purpose of the relocation abroad, had detected the failure of the Revenue Agency to identify the tax advantage achieved or achievable with the artificial foreign location and, furthermore, the lack of evidence due the absence of documentation proving the administrative management of the holding by the Italian office and, on the other hand, the presence of elements supporting the effective foreign location (see foreign residence of the majority of the directors and tax imposition suffered in Luxembourg by the Company). The judges' decision provides a useful recognition of principles, including EU ones, on the subject of abuse of rights and freedom of establishment, for which the restriction of the latter is justified occurring purely artificial constructions, lacking of economic effectiveness and aimed at evading the tax on profits generated by activities carried out in Italy.

Transfer Pricing

Circular Letter No. 16/E, 24 May 2022: "Operating instructions on transfer pricing (Article 110, paragraph 7 of the Income Tax Consolidation Act): Arm's length range"

In the Circular Letter No. 16/E (the "Circular Letter"), issued on 24 May 2022, taking up the object of the Article 6 of the Decree of 14 May 2018 (hereinafter the "Decree"), the Italian Revenue Agency provided important operating instructions regarding the correct meaning to be given to the concept of Arm's Length range, when applying the provisions set forth in Article 110, paragraph 7, of the Income Tax Consolidation Act, approved by Presidential Decree No. 917 of 22 December 1986 and the Double Tax Treaties concluded by Italy in accordance with the provisions of Article 9 of the OECD Model Tax Convention on the taxation of profits of associated enterprises.

The purpose of the Circular Letter is to transpose into the Italian practice what is already provided by the OECD Guidelines in paragraphs from 3.55 to 3.65, and confirmed by the Decree (which provides the general indications for the correct application of the transfer pricing rules), with reference to the arm's length principle, and specifically:

- It is possible to apply the arm's length principle to arrive at a single market value (i.e., price or margin) or even a plurality of values, all equally reliable. In such latter case, the differences between the values that compose the range may be generated by the circumstance that the application of the arm's length principle produces only an approximation of the conditions that would have been established between independent entities (paragraph 3.55);
- Notwithstanding this, it could happen that not all the transactions considered have the same degree of comparability with the transactions under analysis. In this context, transactions between independent entities that have a lesser degree of comparability than others should be eliminated (paragraph 3.56) or "adjusted";
- If through the available information it is not possible to identify any defects of comparability and, consequently, to adjust them, statistical tools that take account of central tendency can be used to narrow the range (e.g., the interquartile range or other percentiles) in order to enhance the reliability of the analysis (paragraph 3.57);
- In addition, a reliable range of values can also be obtained if more than one method, deemed appropriate, is applied to a transaction. In such circumstance, each method may result in a different, but equally reliable range of values (paragraph 3.58);
- Where the value of the financial indicator selected for the tested party is within the identified arm's length range, as illustrated above, no adjustment should be made as all values within the arm's length range are considered equally reliable (paragraph 3.60). On the contrary, if the selected financial indicator is not within the arm's length range determined by the Tax Administration, the taxpayer is required to provide arguments to defend that, conversely, the arm's length principle is respected. In the absence of sufficient arguments, the Tax Administration will determine the point within the arm's length range under which the transaction between associated enterprises will be adjusted (paragraph 3.61);
- In the presence of comparability defects, the Tax Administration may find it appropriate to use measures of central tendency (e.g., average, median or weighted average) in order to minimize the risk of errors due to unknown or unquantifiable comparability defects (paragraph 3.62);
- It is contemplated the possibility that there are "extreme" results within the range, represented by entities making exceptional high profits or losses. In the presence of such results, further investigation is recommended with the aim of identifying the reasons behind said extreme results (e.g., defects in comparability, extraordinary situations affecting comparability) (paragraph 3.63);
- Loss-making transactions represent a particular case, which should not be rejected *a priori*, but evaluated on the basis of specific facts and circumstances. Such transactions require further investigation because, in general terms, an independent entity would not continue to operate its business in the absence of concrete profit expectations (paragraphs 3.63 - 3.65). Accordingly, loss-making transactions or "comparable" companies in a loss position will have to be excluded from the list of comparable companies if the losses do not reflect normal market conditions or if the losses reflect a level of risk different from the one assumed by the tested party in the comparable transaction or in the set of comparable transactions.

In light of the provisions of the OECD Guidelines, confirmed by the Decree, the Circular Letter clarifies the operating procedures for identifying a reliable range of arm's length values. In this regard, the Circular Letter clearly provides that, if the third-party transactions identified in the market have the same level of comparability with the transaction under analysis, the entire range of values (so-called full range) resulting from the financial indicator selected in application of the most appropriate method should be taken into consideration. Conversely, if not all the transactions between independent third parties have the same degree of comparability with the controlled transaction, the range should be narrowed through the

application of statistical tools that consider the central tendency (e.g., interquartile range), provided that there is a sufficient number of observations.

Moreover, both in case of the full range and the interquartile range (i.e., formed by the values from the first quartile to the third quartile), each point within the aforementioned ranges of values should be deemed to comply with the arm's length principle. The foregoing expressly recalls the provisions of the OECD Guidelines, which provide that if the indicator (i.e., price or margin) selected to verify compliance with the arm's length principle of the controlled transaction falls within the identified arm's length range, no adjustment should be made. Conversely, if the price or margin of the controlled transaction does not fall within the aforementioned range, the burden is on the taxpayer to provide the Tax Administration (which will be entitled to request it) with appropriate documentation to prove that the arm's length principle is nevertheless satisfied by virtue of specific reasons. If the taxpayer does not provide sufficient reasons, the Tax Administration will be required to make an adjustment by selecting the point within the range (full range or interquartile range) that best satisfies the arm's length principle.

Beyond this last prevision, it is worth noting how the Circular Letter provides that where the arm's length range consists of results that have a high and equal degree of comparability, each point within the arm's length range will have to be considered representative of market conditions. Therefore, in case the "tested" party has a value of the selected financial indicator that falls outside such a range, the Tax Administration will have to make the correction by limiting the adjustment to the minimum or maximum value of the so-called full range or "restricted" one, depending on which of the two is closer to the value obtained by the taxpayer with reference to the controlled transaction under analysis (i.e., the value that first intersects the one identified by the taxpayer). In this regard, the Circular Letter provides the following example: "*In the case of sales of goods, if the company had determined a range between 80 and 120, placing the financial indicator at 80, and the Tax Administration identified the arm's length range between 100 and 120, the adjustment would have to involve repositioning the transaction price to 100 (i.e., minimum value). Consequently, the taxable recovery that the administration could make would be only that based on a higher taxable amount of 20. In the case of the purchase of goods, if the company had determined the same range as above (between 80 and 120), placing the financial indicator at 120, and the Tax Administration identified the interquartile range between 80 and 100 as the valid arm's length range, the adjustment would have to involve repositioning the transaction price to 100. In that case, the tax recovery that the administration could make would be only that based on a higher taxable amount, due to lower costs, of 20.*"

If, as anticipated above, the identified arm's length range should not include values characterized by a high and homogeneous degree of comparability, the tax authorities may disregard, with proper arguments, the application of the "full range" and consider as the arm's length range, for example, the one based on statistical tools (i.e., in general, the so-called interquartile range).

A scalar approach is, in essence, applied, proceeding to the use of the interquartile range in cases where the "full range" includes transactions or companies of not a high and sufficient degree of comparability, making also reference in this case to the adjustment of the "extremes" of the range (i.e. the 25th or the 75th percentile) depending on which intersects first with the one identified by the taxpayer.

In addition, the Circular Letter states that the selection of a central value within the arm's length range (e.g., the median) should be limited to cases where the range does not include transactions or companies characterized by a high and equal degree of comparability, even after having narrowed the range through the use of statistical tools. In any case, the use of a central value must be specifically justified.

In conclusion, with the Circular Letter, the Tax Administration seems to have wanted to take a significant step in favor of taxpayers, overcoming, at least in part, a long-established practice of almost systematic adjustment (with rare exceptions) to the median in case of deviation from the reference range of the result obtained by the taxpayer. While certainly not taking an innovative position with respect to the international practice, it is undeniable that the Circular Letter marks a turning point in Italian practice.

Government Incentives

Procedure for volunteer repayment of the research and development tax credit – Provision of the Italian Revenue Agency dated June 1st, 2022

(art. 5, par. 7-12, Law Decree October 21st 2021, No. 146)

It was recently released the provision of the Italian Revenue Agency' Director prot. no. 188987/2022, containing the measures and terms for accessing the procedure introduced by Article 5, paragraphs 7 to 12, of Decree-Law No. 146/2021 for volunteer repayment of the tax credit for research and development activities provided by Art. 3, Law Decree December

23rd, 2013, No. 145, converted, with amendments, by Law February 21st, 2014, No. 9, by which undue use of the tax credit can be regularized, without the application of penalties of interest.

It should be noted that the procedure is intended for company who would like to repay the credit accrued in the 2015-2019 fiscal year and used for offsetting other liabilities until October 22th, 2021, if:

- they have actually carried out, by incurring the relevant expenses, activities that in whole or in part could not be qualified as eligible research or development activities in the meaning relevant to the tax credit;
- they have applied par. 1-*bis* of art. 3 of the decree, in a manner that does not comply with the authentic interpretation provision contained in art. 1, par. 72 of Law No. 145 of December 30th, 2018;
- they have made errors in quantifying or identifying eligible expenses in violation of the principles of relevance and appropriateness;
- they have made errors in the determination of the historical 2012-2014 average amount.

In the form, named "*Request for Access to the Procedure for repayment of Tax Credit for Investment in Research and Development Activities*," should be indicated the fiscal years in which the tax credit has been accrued and used, the amounts of tax credit accrued and to be repaid, the reasons for the repayment as well as any other data and elements required in relation to the eligible activities and expenses, and the details of any audit report, notice of assessment, recovery deed.

The form should be filed exclusively electronically through the systems of the Italian Revenue Agency by September 30th, 2022.

It should be noted that will be possible to regularize the amount due by repaying the unduly offset credit within December 16th, 2022, or in 3 equal annual installments (December 16th 2022 - 2023 and 2024) under the condition that the credit has not already been assessed by a definitive deed of the Tax Authority notified before October 22th, 2021.

We would like to highlight that that from the repayment the amounts already paid should be deducted without considering penalties and interest.

Certification of the Tax Credit for Research Development and Innovation activities

(Art. 23, Law Decree No. 73 June 21st, 2022)

In order to facilitate the application of the Tax Credit for research, development and innovation activities set forth by art. 1 par. 200-202 of Law No. 160 of December 27, 2019, art. 23 of Law Decree No. 73/2022, introduces the opportunity to require a certification attesting to the qualification of investments made or to be made for the purposes of their classification among eligible research & development, technological innovation, design and aesthetic ideation activities as well as for the achievement of the objectives of digital innovation 4.0 and ecological transition.

Certification may be requested on the condition that the activities of access, inspection and verification by the tax authority have not already begun.

It is specified that within 30 days from the date in which the Decree enter into force, a Prime

Ministerial Decree, following the proposal of the Minister of Economic Development, in consultation with the Minister of Economy and Finance, will identify the requirements of public and private entities that should have appropriate professionalism, honorability and impartiality that would be able to issue appropriate certification and should be registered in a special register of certifiers.

This certification, will be binding upon the Tax Authorities, unless it is issued for activity other than the actually carried out as a result of incorrect representation of facts**.**

Increased tax credit for investments in intangible assets 4.0

(Art. 21, Law Decree No. 50 May 17, 2022)

Article 21 of the Law Decree 50/2022 increased the tax credit for investments in intangible assets 4.0 included in Annex B of the 2017 Budget Law from 20 percent to 50 percent.

Therefore, taxpayers who make investments in intangible assets 4.0 from January 1st, 2022 to December 31th, 2022 or by June 30th, 2023, provided that by December 31th, 2022, the order has been accepted by the supplier and down payments in an amount of at least 20 percent of the investment cost have been made, could be eligible for a tax credit to the extent of 50 percent of the cost of the investment itself.

As the Explanatory Report specifies, the increase in the incentive rate aims to accelerate the digitization processes of enterprises, in line with the goals and objectives associated with the M1C2 mission of the PNRR called "digitization, innovation competitiveness of the production system."

Increase of the tax credit for training 4.0

(Art. 22, Law Decree No. 50 May 17th, 2022)

In order to make the process of technological and digital transformation of small and medium-sized enterprises more effective, and to increase the qualification of personnel skills, Article 22 of the Law Decree 50/22, increased from 50 percent to 70 percent for small company and from 40 percent to 50 percent for medium-sized company the tax credit for employee training activities aimed at improving technological skills relevant to the digital transformation of company under the condition that these activities are provided by specific subjects and that the results related to the acquisition or consolidation of skills are subject to appropriate certification. A Decree of the Ministry of Economic Development to be adopted within 30 days from the date of entry into force of the decree, will identify those who will render the services and will be qualified for the certification of the obtained results.

On the other hand, regarding projects started after May 17th, 2022, which do not meet the abovementioned requirements, the tax credit drop to 40 percent for small company and 35 percent for medium-sized company. The training 4.0 tax credit for large company remains unchanged at 30 percent.

Tax credit for investment in new assets and tax credit for R&D, technological innovation and design activities - Clarifications In relation to Budget Law 2022

(Italian Revenue Agency Circular Letter No. 14/E dated 17 May 2022)

Circular Letter 14/E provided some clarifications regarding the Tax Credit for investment in new assets after the changes introduced by par. 44, art 1 of Law No. 234 December 30th, 2021.

More in detail, the law, by introducing par. 1057-*bis* to the Budget Law 2021, had extended the incentive for investments in tangible assets 4.0, made from January 1st, 2023 to December 31th, 2025, or June 30th, 2026 in case of order and down payments of at least 20 percent of the total investment made by December 31th, 2025. According to the amended law, the tax credit is equal to 20 percent for investments up to €2.5m, 10 percent for investments from €2.5m to €10m, and 5 percent for investments up to €20m. In this regard, the Circular Letter 14/E, on the base of the indication of the Technical report to the Budget Law 2022, clarified that the plafond set for investments in tangible assets included in Annex A equal to €20 million is to be deemed as referring to the single year and not to the entire three-year period.

On the other hand, regarding the Tax Credit in Research & Development, Innovation and Design activities, it is to be remembered that par. 45 of the Budget Law 2022 extended the tax incentive until 2025 (i.e., until 2031 in case of research and development activities) by reshaping the related tax credit rates. Circular Letter 14/E extends to the Tax Credit for Research & Development Innovation and Design activities some clarifications already made in Circular Letter 9/E of July 23th, 2021 in relation to the Tax Credit for investment in new assets.

In fact, it is confirmed that in case of disqualifying penalties, the taxpayer could not benefit of the tax credit for the same time frame affected by the application of the relevant disqualifying sanction, and the investments in the activities eligible for the tax Credit for Research, Development and Innovation made during such time frame are irrelevant for the purposes of the incentive. Therefore, the related costs are excluded from the basis for calculating the tax credit.

It should also be noted that, in order to utilize the tax credit, the taxpayer shall verify the regularity of the social security contributions' payment.

To this end, the Tax Authority clarifies that the availability of the Document of Contribution Regularity (so called DURC) valid at the time of the use of the tax credit constitutes proof of the proper fulfillment of the social security obligations.

Please note that the tax credit can be used in three annual installments, starting from the fiscal year following the one in which it accrues, subordinated to obtaining a certification from the auditor. If the annual installment (or part of it) is not used, the remaining amount can be carried forward without time limit and be used starting from the following year.

Tax credits related to the purchase of electricity - Increases and clarifications

(Italian Revenue Agency Circular Letter 13/E of May 13, 2022 and Article 2 Law Decree No. 50 May 17, 2022)

With reference to the Electricity Purchase Tax Credit for "energy-intensive" subject, the Italian Revenue Agency Circular Letter 13/E provided some important clarifications. More in detail, it specifies that only companies that are included in the list of energy-intensive company published by the CSEA for the year 2022, can benefit from the tax credit to the extent of 20 percent for the first quarter and 25 percent for the second quarter, respectively.

The mentioned document also clarified that eligible expenditure include the costs incurred for the purchase of the energy component (consisting of electricity, dispatching and commercialization costs), excluding any direct and/or indirect additional charges shown on the invoice other than the energy component. This is basically the macro-category usually

shown on the invoice as "energy expense." Transport costs and financial hedges on electricity purchases, by way of example, are not eligible expenses.

The tax credit could be used to offset any other tax liabilities starting from the date on which all the requirements provided by the law (subjective, objective, and available documentation) are verified.

Indeed, it is possible to use the tax credit before the end of the relevant quarter, as long as the expenses for the purchase of the electricity consumed in such quarter, can be considered to have been incurred, according to the criteria set forth in Art. 109 of the TUIR, in the abovementioned quarter based on the related invoices.

Lastly, it is worth nothing that par. 3 of Art. 2 of Decree Law 50/2022 raised the incentive rate of the tax credit for the purchase of electricity for non-energy-intensive companies for the second quarter of 2022 from 12 percent to 15 percent.

Tax credits related to the purchase of natural gas - Extension and clarifications

(Art. 2 and 4 Law Decree May 17, 2022, No. 50 and Italian Revenue Agency Circular Letter 20/E of June 16, 2022)

Article 2 of Decree Law 50/2022 increased the tax credit for gas-intensive companies and company other than the gas-intensive from 20 percent to 25 percent for the second quarter 2022, aligning it with the tax credit for the purchase of electricity for the electivity-intensive company.

In addition, Art. 4 of the same Decree extended only for gas-intensive company the tax credit for the purchase of gas for the first quarter to the extent of 10 percent of the expenditure incurred for the purchase of natural gas, consumed (not for thermoelectric uses) in the relevant quarter.

The benefit is granted under the condition that the reference price of the gas, calculated as the average, referring to the last quarter of 2021, of the reference prices of the Infraday Market (Mercato Infragiornaliero) has been increased by more than 30 percent of the corresponding average price referring to the same quarter of the year 2019.

As for the tax credit related to the second quarter, also this tax credit may be used in F24 to offset other tax liabilities within December 31th, 2022 and is transferable, for the full amount to other entities, including financial institutions and other financial intermediaries, with the possibility of two additional transfers exclusively to qualified subject with a compliance certification requirement. The tax credit is not relevant for IRES and IRAP purposes and can be combined with other incentive in relation to the same costs, up to the limit of the cost incurred.

The Circular Letter 20/E/2022 also clarified, that the costs of the "gas" component (cost of the commodity) are eligible for tax credit, excluding any other direct and/or indirect ancillary charges indicated in the invoice. This is, basically, the macro-category usually indicated in the invoice "expense for natural gas material". On the other hand, by way of example, expenses for transportation, storage, distribution and metering (so-called network services) are not eligible for the tax credit.

The document clarifies that it is eligible the cost incurred for gas consumed "for energy uses other than thermoelectric uses." The tax benefit under analysis also covers expenses incurred for the purchase of gas used as motor fuel, as this constituting an "energy use" of the gas itself. In this regard, it should be noted that access to the tax benefit is subject to the actual use, by the purchaser, of the gas purchased for motor fuel; therefore, resellers, who are not users of the gas itself, are excluded from the benefit.

FSI

Qualification as "interposed entity" of a Company resident in the Cayman Islands – article 37(3), Presidential Decree no. 600/1973 | Ruling no. 274 of 2022

The Italian Revenue Agency ruling no. 274 of 2022 deals with the qualification of a company resident in the Cayman Islands ("LP") as "interposed entity" for tax purposes, under Article 37(3) of Presidential Decree no. 600/1973.

The Claimant ("Limited Partner") is an Italian individual, manager of a foreign Group, who has a minority shareholding in a company based in the Cayman Islands. This latter will invest the capital raised from shareholders in units of Alternative Investment Funds ("AIFs"), whose shares are traded on regulated markets. In this regard, the Limited Partner is entitled to receive the income deriving from those AIF units corresponding to its investment in LP only – hence, the Limited Partner is not entitled to receive proceeds stemming from those AIF's units purchased by LP in the interest of other Group's managers.

The LP, whose activity merely consists in holding AIF units, is managed by the General Partner¸ namely a company resident in the Cayman Islands. In addition, the LP does not hold any financial assets located in Italy, it does not bear any staff costs and it does not have any premises where an actual economic activity is caried out. In a nutshell, the LP can be regarded as a

corporate vehicle investing in the AIFs and allowing for a flexible and centralized investment management of Group's managers.

It should be also noted that the AIF is established in Luxembourg, it is qualified as an undertaking for collective investment scheme and the related manager is a Luxembourg company authorised by the CSSF.

On a preliminary basis, the Italian Revenue Agency notes that in order to qualify the LP as a merely "interposed entity", the analysis should take into account all the relevant shareholders, the actual activity performed by the foreign entity as well as the relationships with the shareholders and third parties.

Based on the framework outlined by the Claimant, the Italian Revenue Agency deems that the LP cannot be regarded as an "interposed entity" for tax purposes, since:

(i) the structure described by the Claimant is consistent with the Group's strategy allowing its managers – including the Claimant – to invest indirectly through the LP in AIFs managed by Group's companies;

(ii) the LP is actually managed by the General Partner;

(iii) the Claimant does not intervene in the LP management.

Lastly, the Italian Revenue Agency points out that the proceeds stemming from the LP are fully taxable at the level of Italian individual, since LP is regarded as an entity resident in a "black list Country" under article 47-*bis* of the Italian Tax Code and that the Claimant shall fulfill the relevant tax reporting and payment obligations on foreign financial assets.

Financial Intermediaries – deductibility of reversals on client's receivables write-off and write-downs pursuant to article 16, Law Decree no. 83 of 2015, originally deductible in 2022 | Article 42, Law Decree no. 17/2022

By way of introduction, it is recalled that for banks and other financial intermediaries article 16, para. no. 3-4 and no. 8-9 of Law Decree no. 83/2015 establish that write-downs and write-offs related to client's receivables not deducted until fiscal year 2015 are deductible in subsequent fiscal years until 2029, on the basis of the different rates (12% for 2022). In this respect, article 42 of Law Decree no. 17/2022 provides that the deduction of abovementioned 12% shall be made on a straight-line basis in FY 2023 and in the following three fiscal years. As a consequence, the amount of write-downs and write-offs related to client's receivables not deducted until fiscal year 2015 – and deductible in fiscal year 2022 – can be now deducted in four equal installments (3%) in fiscal years from 2023 to 2026. In addition, it should be noted that under article 42, para. 1-*bis* of Law Decree no. 17/2022 the deduction of mentioned write-downs and write-off – not already deducted and deductible in fiscal year 2026 for 10% of their amount – is brought-forward to 2022 for an amount equal to 5,3%.For the sake of completeness, pursuant to the mentioned article 42, IRES and IRAP advance payments due for fiscal years from 2022 to 2027 should be determined in accordance with the above rules. With reference to fiscal 2022, it is provided that:

- in case the taxpayer applies the so called "historical method", IRES and IRAP advance payments are calculated without considering the deduction of mentioned write-downs and write-off (not already deducted until 2015) and deducted in fiscal year 2021;
- if the so called "provisional method" applies, IRES and IRAP advance payments for fiscal year 2022 shall be determined without considering above mentioned 5,3% deductible in 2022.

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