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Italian tax news

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PROOF OF INTRA-UE SUPPLY FOR VAT PURPOSES

With ruling no. 272 of 3 April 2023, The Italian Tax Authorities clarified that the "written declaration" to be released by the buyer under Article 45-*bis*, paragraph 1(b)(i) of EU Regulation 282/2011 for the purpose of proving an intra-EU supply of good can also be transmitted through the EDI (Electronic Data Intercharge) system.

In the Explanatory Notes named "Quick fixes 2020", it is stated that there are no specific provisions in Regulation 282/2011 as to the format in which the relevant documents must be provided.

Electronic formats are therefore admissible, to the extent that they allow to verify the integrity, authenticity, truthfulness and unchangeability of the contents to be verified verification. The formats should also allow to verify the date and the author of the declaration.

SCOPE OF THE VAT CALL-OFF STOCK REGIME

With ruling no. 271 of 3 April 2023, the Italian Tax Authorities clarified that the scope of the **call-off stock** VAT regime, regulated for by Article 41-*bis* of **Law Decree** no. 331/93, only takes care of intra-UE supplies occurring between a supplier and a purchaser. Accordingly, triangular transactions do not fall within its scope.

Where the supply contract, concluded between supplier A and its customer B, fulfils the conditions for the application of the call-off stock regime, the transfer by the latter to a third-party C (B's customer) should be considered as a separate, autonomous and distinct transaction subject to ordinary VAT rules.

VAT TREATMENT OF TRANSACTIONS INVOLVING EU ARMIES DEPARTMENT

The **Italian Tax Authorities** investigated the VAT treatment to be applied to supplies of goods and services in favour of other EU Countries' army.

In particular, with the **Circular Letter** no. 8 of 6 April 2023, the Italian Tax Authorities have clarified that, for the VAT regime provided for by Art. 72(1)(b-*bis*) and (b-*ter*) of Presidential Decree no. 633/72, transactions carried out for the benefit of other EU Member States' army must be territorially relevant – for VAT purposes – in Italy. However, these transactions may be exempted from VAT if the following requirements are met:

- the goods or services must be supplied to armies personnel or civilian personnel working with the army or for furnishing canteens;
- the goods or services must be supplied in a Member State other than the Member State in which the supplier is located for VAT purposes;
- the goods or services supplied must serve the purpose of fostering activities covered by the CSDP (Common Security and Defence Policy).

IMPLEMENTATION OF THE INTERNET CROWDFUNDING DIRECTIVE

Legislative Decree no. 30/2023, implementing the EU Regulation 2020/1503/EU on European crowdfunding service providers for business, entered into force on 8 April 2023. The EU Regulation is aimed at harmonizing, within the Union, the requirements for the provision of "crowdfunding" services

with regard to the organisation, authorisation and supervision of the providers of such services, the operation of the relevant platforms, and transparency and information obligations towards investors.

In addition, Art. 100-*ter* of the Legislative Decree no. 58/98, as replaced by the Legislative Decree no. 30/2023, now provides that, by way of derogation from the provisions of Art. 2468(1) of the Italian Civil Code, quotas of Italian limited liability companies may be offered to be sold to the public also through "crowdfunding" platforms, subject to the limits set forth in the aforementioned Regulation 2020/1503/EU.

TAX TREATMENT OF SHARES ASSIGNED TO A NON-ITALIAN RESIDENT EMPLOYEE

According to the Italian Tax Authorities' ruling no. 289 of 11 April 2023, a gain derived from the sale of shares assigned to an employee must be determined as the difference between the sale price and the **fair market value** that the shares had when they were first assigned to the employee, to the extent that the employee was subject to tax in his/her State of residence upon the assignment.

In other words, the Italian Tax Authorities maintained that the fair market value that the shares had when assigned to the employee should be taken into account in computing the capital gain even if the assignment of the shares has taken place when the taxpayer was resident abroad and subject to taxation therein.

REQUIREMENTS FOR FOREIGN MERGERS NOT TO TRIGGER TAX CONSEQUENCES IN ITALY

With its ruling no. 294 of 14 April 2023 the Italian Tax Authorities confirmed that the merger between two companies resident abroad (in particular, in Israel) through which the participation in one Italian company is transferred to the existing company to the one resulting from the merger it has to be considered as tax neutral from an Italian tax perspective.

The tax neutrality regime provided for by Art. 172 of the **TUIR** is granted where the following conditions are met:

- under the domestic corporate law of the Countries of the companies involved, the merger carried out abroad has the same features that It would have had under Italian law;
- the entities involved have a juridical form which is similar to the ones that might benefit from the tax neutrality regime in Italy;
- the transaction triggers potential tax effects in Italy.

As all the requirement listed above were met in the transaction at stake, the Italian Tax Authorities confirmed that no taxes should be levied in Italy as a consequence of the transfer of the Italian participation from the company existing prior the merger to the company resulting from the merger.

IMPORTED MISMATCH ARRANGEMENT BETWEEN AN ITALIAN COMPANY AND ITS SWISS CONTROLLING ENTITY

The Italian Tax Authorities have denied the deduction of the costs deriving from the acquisition by an Italian distributor being part of a multinational group from its Swiss controlling company as such costs triggered an imported **hybrid mismatch** under Art. 8(3) of the Legislative Decree no. 142/2018.

According to ruling no. 288 of 7 April 2023, the following requirements were met in the case at stake:

- there was a payment triggering a hybrid mismatch, being the cost incurred by the Italian company buying from its Swiss controlling entity;
- there was a deduction without inclusion arising from the amortization deducted by the Swiss controlling company in connection to the goodwill this last company recorded for Swiss tax purposes at the time of leaving the so-called principal regime;
- there was a nexus between payment and the deduction as the income derived by the Italian company as a result of the sale was matched with the depreciation cost recorded by the Swiss acquiring company.

NEW AGREEMENT BETWEEN ITALY AND SWITZERLAND REGARDING FRONTIER WORKERS

In its press release issued on 20 April 2023, the Ministry of Economy and Finance announced that Italy and Switzerland have signed a political agreement that provides:

- for Switzerland to be deleted from the Italian black list of individuals issued with the Ministerial Decree 4 May 1999;
- the introduction of a transitional rule on remote working for **frontier workers**, effective until 6/30/2023.

With specific reference to the taxation of frontier workers, on 23 December 2020, Italy and Switzerland have signed a new agreement which provides for a taxation in the State where the working activities are carried out which cannot exceed 80% of the taxation that would have been ordinarily levied would have been levied if the activity qualified as “ordinary” work.

The law proposal needed to ratify the aforementioned agreement has been approved by the lower House of Representative in Italy and states that:

- pending the entry into force of the remote working regulations, from 1 February 2023 to 30 June 2023 the days of remote working performed in the State of residence, up to a maximum of 40% of working time, are considered to have been carried out in the other State.
- the removal of Switzerland from the black list will be carried out by issuing a dedicated law decree.

RESEARCHER INCOME EXCEPTION APPLIES ASLO WITH RESPECT TO TAX-FREE RESEARCH GRANTS

In the **statement of practice** no. 8 of 21 April 2023, the Italian Tax Authorities has clarified that an individual receiving a tax-free research grant while moving to Italy may benefit from the regime provided for by Art. 44 of Law Decree no. 78/2010 (which provides for the 90 percent personal income tax

exemption for the income derived by professors and researchers who have transferred their residence to Italy).

The circumstance that such income is already exempted from **IRPEF** does not prohibit to access the benefit.

In such a case, the regime will start to apply from the fiscal year in which the taxpayer becomes tax resident in Italy.

SCOPE OF THE TAX REGIME APPLYING TO LOW-TAXED TRUSTS

Art. 44(1) lett. g-*sexies*) of the TUIR qualifies as income from those attributed by transparent trusts, including non-resident ones, as well as income paid to Italian residents by trusts established in low tax jurisdictions (as defined under Art. 47-*bis* of the TUIR) even where the resident recipients cannot be considered identified beneficiaries.

In other words, income derived by an Italian resident from opaque trust is always considered taxable in Italy under Article 44(1) lett. g-*sexies*) of the TUIR if the tax rate applicable to the income derived by the relevant trust in its jurisdiction is lower than 50% of the tax rate that would have been applied in Italy.

With **ruling** no. 309 of 28 April 2023 the Italian Tax Authorities confirmed that although the relevant provision of law makes a generic reference to "foreign trusts," this regime only applies with respect to opaque trusts established in low-tax jurisdictions.

GERMAN TAXATION ON FOREIGN REAL ESTATE FUNDS IS IN BREACH OF EU LAW

The **European Court of Justice**, in its decision on Case C-537/20 of 27 April 2023, stated that the German tax rules relating to income derived by foreign real estate funds are in breach of the **free movement of capital principle** enshrined in Art. 63 of the TFEU.

Indeed, the German provision at stake provides for a full exemption for real estate income derived by resident real estate funds. On the other hand, the same kind of income derived by foreign real estate funds are partially subject to tax. This difference cannot be justified and infringes EU law.

DOMESTIC MERGERS AND MERGER DIRECTIVE

In its decision on the Case C-827/21 of 27 April 2023, European Court of Justice clarified EU law does not oblige Member States to implement domestic tax rules on mergers between its own resident companies in accordance with Directive 2009/133/EC. Indeed, such piece of legislation only deals with only mergers occurring between companies based in different Member States.

Accordingly, Romania's legislation, which under certain conditions provides for the taxation of mergers between two companies resident in Romania was found to be compliant with EU law.

USA ARE IMPLEMENTING THE INFLATION REDUCTION ACT

The U.S. Treasury Department has formalized the Strategic Plan for the implementation of the Inflation Reduction Act (IRA).

The main objective is to modernize the tax system and manage the several tax credits granted by the IRA, particularly in the areas of mobility and renewable energy.
In particular, the Plan focuses on:

- the digitalization of the tax return filing;
- in the timely issuance of official guidance on each tax credits;
- improving the collection system;
- increasing the number of tax audits.

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