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Italian tax news

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ISSUANCE OF INVOICES IN TRANSACTIONS OF THE HQ THAT DIRECTLY INVOLVE THE PERMANENT ESTABLISHMENT

With **ruling** no. 336 of the 1 June 2023, the Italian Tax Authorities clarified that the activities performed by a permanent establishment when managing customer relations, researching potential customers resident in Italy and drafting contractual documentation, enable the parent company to perform its services. In similar cases, it is the permanent establishment that has the responsibility for issuing the invoices to domestic customers.

BENEFICIAL OWNERSHIP UNDER THE PARENT-SUBSIDIARY DIRECTIVE

On the 8 June 2023, the **Italian Supreme Court** issued its decision no. 16173 stating that the refund of withholding taxes on dividends levied pursuant to Art. 27-*bis* of Presidential Decree n. 600/73 (the rule implementing in Italy the provisions of the so-called **Parent-Subsidiary Directive**) cannot be executed if the direct recipient of the payment does not qualify as the beneficial owner.

In this specific case, a Luxembourg company received dividends from its Italian subsidiary and asked for a refund of the Italian withholding suffered on this distribution. However the Supreme Court denied its right to a refund on the withholding tax paid on this stream of dividends because the Luxembourg company was considered to be an interposed entity and that the real **beneficial owner** of the payment was the ultimate parent entity based in the Virgin Islands.

The denial was based on the fact that:

- the Luxembourg recipient company had no employees, and its sole activity was the management of the Italian subsidiary;
- the shareholding in the Italian company was acquired two months after incorporation;
- the Luxembourg recipient company and the Virgin Islands ultimate parent company were incorporated almost at the same time.

EXTENSION OF THE PERIMETER FOR TAX RELIEF FOR FIRST TIME HOMEOWNERS

Article 2 of Law Decree no. 69/2023, published in the Official Gazette no. 136 of 13 June 2023, modifies the conditions for entitlement to tax relief upon the acquisition of a first property (4% VAT or 2% stamp duty for deeds of transfer for valuable consideration).

The new rules, which came into effect on the 14 June 2023, provide that if the buyer has moved abroad for work reasons but has resided or carried out his activity in Italy for at least five years, such buyer is entitled to the benefit of the abovementioned reduced tax rates. However, this only applies whereby the property purchased is in the buyer's municipality of birth or residence before moving abroad.

TRANSACTIONS BETWEEN ITALIAN PERMANENT ESTABLISHMENTS OF COMPANIES THAT BELONG TO A FOREIGN VAT GROUP

With the publication of statement of practice no. 11 of 13 June 2023, the the Italian Tax Authorities affirmed that transactions carried out between two permanent establishments located in Italy of two different foreign companies, which are part of a foreign VAT group, cannot be considered irrelevant for VAT purposes if the transactions are actually attributable to those permanent establishments.

Following the establishment of a VAT group the participating companies cease to be liable to VAT on their own account and become subject to VAT in favour of that of the group, considered as a whole.

As a general rule, transactions occurred between entities part to the same VAT group are not VAT relevant; however, as an exception, transactions between a permanent establishment and its head-office part to the same VAT group are VAT relevant.

The same goes for transactions occurring between two permanent establishments held by two head-offices part to the same VAT group.

FAILURE TO INDICATE THE OPTION FOR THE BRANCH EXEMPTION IN THE TAX RETURN

With the statement of practice no.10 of the 13 June 2023, the Italian Tax Authorities state that the election for the branch exemption regime (Art. 168-ter of the TUIR), which is done by indicating the income of the foreign permanent establishment in a dedicated section of the tax return (the RF Form) is not a formal error.

Therefore, the failure to fill in such section cannot be rectified.

IMPLEMENTATION OF THE SUBSTITUTE TAX ON FOREIGN BLACK-LIST PROFITS

The Ministerial Decree which was published in the Official Gazette on the 26 June 2023 contains the implementing provisions on the substitute tax on foreign black-list dividends (Art. 1(87) et seq. of Law no. 197/2022, the 2023 **Budget Law**), which provides for the 9% substitute tax instead of the full taxation, which for companies is 24%.

The main aspects regulated by the Decree are as follows:

- the option may be exercised separately for each participant or with reference to only a portion of the profits/dividends;
- the option for the substitute tax is effective as a consequence of the disclosure of the profits/dividends in the **RQ Form** of the tax return of each interested party regardless to the execution of the 9% substitute tax payment;
- in order to calculate the 9% substitute tax, the relevant profits/dividends have to be converted into euros according to the exchange rate at the end of the 2022 financial year;
- it is confirmed that the substitute tax is reduced to 6% with respect to repatriation of the profits occurring within 30 June 2023 only where an Italian person controls the relevant foreign entity;
- foreign taxes paid on the profits/dividends cannot be credited.

NEW AGREEMENT ON EMPLOYMENT INCOME FOR FRONTIER WORKERS RATIFIED

Law no. 83 on the 13 June 2023, ratifying the new Agreement between Italy and Switzerland on **frontier workers** was published in the Official Gazette on the 30 June 2023.

The new Agreement provides for the replacement of the system of exclusive taxation in Switzerland for Italian frontier workers with a tax sharing system between the two States. The change in regime shall come into effect as of 2024. The tax due in the State where the activity is carried out may not exceed 80% of the tax ordinarily due.

The current tax regime for frontier workers at the date when this Agreement was published shall remain in force by virtue of a transitional rule.

The above-mentioned Law no. 83/2023 also:

- increases the income allowance for frontier workers for Italian tax purposes to EUR 10,000.00;
- contains a safeguard provision for frontier workers to be able to work remotely but only until 30 June 2023;
- commits Italy to remove Switzerland from the black-list of natural persons.

INBOUND WORKERS REGIME FOR SPORTSPERSONS

With the statement of practice no. 38 of 30 June 2023, the Italian Tax Authorities provided clarifications on the application of the special **inbound workers regime** for sportspersons (50% exemption of taxable income for workers who transfer their residence to Italy).

For the Italian Tax Authorities, the special regime for sportspersons only concerns income derived from sports contract. Income deriving from the transfer of image rights, or from advertising promotion activities, may therefore only be eligible for the beneficial tax regime if earned within the framework of the sports employment relationship with the same employer.

Fees from image rights received from third parties, on the other hand, do not fall within the perimeter of the inbound workers regime.

IMAGE RIGHTS TERRITORIALITY UNDER ITALIAN DOMESTIC LAW

The Tax Court of second instance of Piedmont has stated that, under Italian tax law, image rights have to be considered as self-employment income. In addition, it is presumed that such income arises (*i.e.* such income is territorially relevant) where the recipient is resident for tax purposes.

According to the Tax Court, this presumption is even more sound where the image rights are exploited through internet.

EXTENSION OF THE SPLIT PAYMENT REGIME IN ITALY

The proposal for a council implementing decision (EU) no. 342 of the 26 June 2023, submitted by the European Commission to the EU Council, provides for the authorisation for Italy to continue applying the split payment mechanism until 30 June 2026, as well as the exclusion, as of 1 July 2025, of companies listed in the FTSE MIB index of the Italian Stock Exchange from the perimeter of application of the split payment measure.

The **split payment mechanism** (Art. 17-ter of Presidential Decree no. 633/72) was implemented because following the introduction of a system of statistical checks, Italy discovered considerable VAT fraud. To put an end to these practices Italy requested in 2014 that, for supplies of goods and services to public authorities, the VAT due would be paid directly to the Tax Authorities by the said public authorities.

CJEU'S CLARIFICATION ON THE CONCEPT OF A PERMANENT ESTABLISHMENT

In its decision C-232/22 of 29 June 2023 *Cabot Plastics Belgium SA*, the **European Court of Justice** ruled that a company cannot be considered as a fixed establishment for VAT purposes in the Member State in which the service provider is established if the latter does not have an adequate structure in terms of human and technical means in the territory of the State.

Even if Art. 11 of EU Regulation No. 282/11 does not require, for the purposes of the notion of **permanent establishment**, that the principal possesses the technical and human means on his own, it is nevertheless necessary that it has the power to dispose of the human and technical means of the subsidiary as if they were its own.

PROPOSAL FOR A SIMPLIFIED REFUND PROCEDURE ON WITHHOLDING TAXES ON DIVIDENDS AND INTEREST

The proposal for a directive COM (2023) 324, which has been approved by the European Commission, aims to facilitate the direct levying of reduced withholding taxes on dividends and interest paid to non-residents or the reimbursement of excess withholding taxes.

Both procedures would be carried out by financial intermediaries upon presentation of an electronic residence certificate (eTRC).

The provisions would only apply with respect to shares and bonds listed on regulated markets and multilateral trading facilities and are intended to be operational as of 1 January 2027.

UZBEKISTAN JOINS THE INCLUSIVE BEPS FRAMEWORK

On the 9th June 2023 Uzbekistan joined the international efforts against tax evasion and avoidance by joining the OECD/G20 Inclusive Framework on BEPS.

Uzbekistan has also committed to addressing the tax challenges arising from the digitalisation of the economy; it has joined the two-pillar standard to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate.

STATEMENT ON A TWO-PILLAR SOLUTION

On 8 October 2021 the OECD published a statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. As of 9 June 2023, 139 member jurisdictions have agreed to it - this does not include all Inclusive Framework members.



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