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BENEFICIAL OWNERSHIP REQUIREMENTS UNDER THE INTEREST&ROYALTY DIRECTIVE

According to the **Italian Supreme Court** decision no. 510 and 521 of 8 January 2024:

- in the context of the **Interest&Royalty Directive** (Directive 2003/49/EC), the notion of beneficial owner is to be understood as a substantive rule aimed at allocating taxing power, and not as an anti-abuse clause;
- verifications aimed at certifying the fulfilment of the requirements of the Directive (for exemption or refund of withholding taxes) must be distinguished from abuse in the technical sense, which exists in the case of artificial arrangements aimed at fraudulently benefiting from benefits of the Directive;
- refund denials are therefore lawful if, as in the cases analyzed by the Supreme Court, the documentation related to the **beneficial owner** status of the recipient of the interest payments is deemed to be insufficient.

NON-RESIDENT SUBMITTING "HIGH-SEAS VESSELS" ONLINE DECLARATION

According to the **statement of practice** no. 2 of 9 January 2024 by the **Italian Tax Authorities**, non-resident persons without a tax representative or direct identification for VAT purposes in Italy may submit electronically (on the Italian Tax Authorities' website) the so called "high seas" declaration which is used to certify the fulfilment of the requirements of navigation on the "high seas", pursuant to Article 8-*bis* of Presidential Decree 633/72. Where such regime applies, certain purchases are treated as VAT free.

INDEPENDENT AGENTS ACTING IN ANOTHER STATE MAY NOT QUALIFY AS A PERMANENT ESTABLISHMENT

In the Italian Supreme Court decision no. 992 of 10 January 2024, the Italian subsidiary of a Swiss holding company was not found to be a **permanent establishment** in Italy of its foreign principal.

In the case analyzed by Italian Supreme Court, the Italian subsidiary acted as commission agent and marketed in Italy the products of the group.

Based on this fact pattern, the Supreme Court has pointed out that, under Article 162(7) of the **TUIR** (also in the wording in force at the moment the tax assessment was issued), a person which operates in the territory of the State on behalf of a non-resident enterprise and carries out therein its activities as an independent agent, acting in the ordinary course of its business, shall not qualify as a permanent establishment.

What above is also confirmed by the wording of Article 5 of the Italy-Switzerland **Tax Treaty**.

DONATIONS MADE BY NON-RESIDENTS ARE NOT TAXABLE IN ITALY

According to **ruling** no. 7 of 12 January 2024, a donation of money executed by a person who is resident in Switzerland for tax purposes by mean of a bank transfer it is not relevant for the purposes of the application of the Italian **inheritance and gift tax** (as the territoriality requirements provided for by Article 2 of Legislative Decree 346/90 are not met).

In the case scrutinized in the ruling, the money donated was considered as an asset located out of the territory of the State, since, although intended for a beneficiary resident in Italy, it was (prior to the deed) deposited in a bank account of a Swiss institution and the donor was resident therein as well.

UK SELF-INVESTED PERSONAL PENSION (SIPP) E INTERNATIONAL PENSION PLAN (IPP) TREATMENT FOR IVAFE PURPOSES

According to ruling no. 5 of 11 January 2024, individuals employed and tax resident in Italy receiving pension benefits from the United Kingdom - under Self-Invested Personal Pension (SIPP) and International Pension Plan (IPP) are deriving "pension income" falling within the scope of Article 49(2)(a) of the TUIR.

Indeed, according to the Italian Tax Authorities' opinion, the SIPP is a form of supplementary pension scheme under UK law.

Accordingly, the Italian Tax Authorities also confirmed that **IVAFE** does not come due on the value of this kind pensions.

OBLIGATIONS OF DATA STORING AND TRASMISSION FOR PAYMENT SERVICE PROVIDERS

With four FAQs dated 17 January 2024, the Italian Tax Authorities provided clarification on the obligations for payment service providers (PSPs) to store and transmit data on "cross-border payments".

In particular:

the information must be sent to the Italian Tax Authorities within the last day of the month following the relevant quarter. On their turn, the Italian Tax Authorities must send such information to CESOP (Central electronic system of payment information) by the tenth day of the second month following the relevant quarter;

the outcome of processing activity carried out by the national system is generally received within five days on the Data Interchange System;

to the extent that the other requirements of the regulation are met (number of cross-border transactions above the threshold, location of the payee's PSP, etc.), foreign transfers that a PSP makes for the payment of a supplier's invoices are also in-scope.

REAL ESTATE PROPERTIES IN ITALY WHERE BUSINESS ACTIVITIES ARE CARRIED OUT QUALIFY AS A PERMANENT ESTABLISHMENT

According to what the Italian Supreme Court upheld in its decision no. 2116 of 22 January 2024, a property held in Italy by an individual tax resident in Germany in which psycho-educational activities are carried out may qualify as a permanent establishment.

In particular, the Supreme Court maintained that:

- the place of business was fixed both geographically and temporally;
- the place of business was suitable to generate income;
- the place of business was at the disposal of the foreign individual.

The income of the permanent establishment was, then, subject to taxation in Italy pursuant to Article 14 of the Italy-Germany Tax Treaty, since it involved activities qualifying as self-employment activities: for these purposes, the notion of "fixed base" exactly coincides with the permanent establishment concept under Article 5 of the Tax Treaty between these two States.

SUBSTITUTE TAX FOR PENSIONERS APPLIES ACCORDING TO THE DOMESTIC TAX RESIDENCE DEFINITION

Through the ruling no. 21 of 29 January 2024 the Italian Tax Authorities have clarified that the **substitute tax for pensioners** provided for by Article 24-*ter* of the TUIR may also be enjoyed by an individual who is enrolled in the **register of the population resident** but is resident in the United Kingdom under Article 4(2) of the Italy-United Kingdom Tax Treaty by mean of not having transferred his centre of vital interests to Italy.

From the conclusions, it would seem that the benefits linked to the pensioner regime are applicable merely because Italian residency is acquired on the basis of domestic criteria (e.g. registration in a register of the population resident) even if the relevant individual continues to be non-resident on the basis of a tax treaty.

REFORM ON TAX ASSESSMENT RULES APPROVED BY THE ITALIAN COUNCIL OF MINISTERS

On 25 January 2024, the **Italian Council of Ministers** gave final approval to the tax assessment reform. Article 3 of the Legislative Decree enacting the reform, in particular, reorganises the rules on the exchange of information and provides for the introduction of specific forms of cooperation between national and foreign administrations.

The provision harmonises the European regulation on administrative cooperation, extending it also to third Countries with which there is a bilateral convention.
The regulation intervenes, first of all, by amending Articles 31-*bis* and 31-*bis*1 of Presidential Decree 600/73 and introduces new Articles 31-*bis*2 to 31-*bis*4, which separately regulate other instruments of advanced administrative cooperation.

DEADLINE EXTENSION FOR THE COMMUNICATION OF THE DIGITAL PLATFORM DATA

The Italian Tax Authorities has issued, on 30 January 2024, the **ordinance** no. 22931 through which it provided for the extension to 15 February 2024 of the deadline for reporting information for the fiscal year 2023 by digital platform operators.

However, the deadline for the automatic exchange of this information between the tax administrations of the Member States involved remains still set on the 29 February 2024.

The provision also clarifies that the communications might be made through Entratel or Fisconline, directly or by availing of one of the persons mentioned in Article 3(2-*bis*) and (3) of Presidential Decree 322/98.

VAT ON FALSE INVOICES IS STILL DUE BY THE PERSON WHICH ISSUED THEM

In its decision on Case C-442/22 of 30 January 2024 in, the **European Court of Justice** stated that an employee who has issued false invoices, wrongly using his employer's identification data and without his consent is liable for the VAT reported in the invoice.

In this case, according the European Court of Justice, Article 203 of Directive 2006/112/EC applies, which states that "VAT shall be payable by any person who enters the VAT on an invoice": in the case at stake and in order to combat frauds, the employer (which had its tax data stolen by its employee) cannot be considered to be the one who entered the VAT on an invoice and hence cannot be considered to be liable to tax.

However, in order for the employer not to be considered liable for the VAT on the invoice it must provide proof that he acted with all due diligence to avoid the issuance of fraudulent invoices.

THE OECD RECEIVED PUBLIC COMMENTS ON THE PROPOSED AMENDMENTS TO ART. 5 OF THE OECD MODEL

On 16 November 2023, the OECD has asked to receive public comments on the proposed amendments to the Commentary to Article 5 of the OECD Model Tax Convention and, in particular, on its application to natural resources extraction. The comments were received on 22 January 2024.

The amendments on the Commentaries are the result of the activity of the Working Party 1 which is the sub-group of the OECD Committee on Fiscal Affairs in charge of the OECD Model Tax Convention and of the development of an alternative provision to be included in the Commentary to Article 5 of the OECD Model Tax Convention on the activities related to the exploration and exploitation of natural resources.

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We remain at your disposal for any clarification and we take this opportunity to extendour best regards.

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