FAZZINI HOLZMILLER & PARTNERS

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Italian tax news

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BOUNDARIES TO THE APPLICATION OF THE ITALIAN BLACK-LIST COSTS PROVISIONS

With its decision no. 2960 of 1 February 2024, the **Italian Supreme Court** ruled that the non-deductibility regime of "black-list" costs under Article 110(9-*bis*) and ff. of the TUIR cannot be presumptively invoked by the **Italian Tax Authorities** merely because the counterpart of the Italian company, resident in the European Union, is in its turn controlled by a parent company resident in a black-listed Country.

The court procedure relate to a loan received by the Italian company controlled by a Luxembourg subholding which was in its turn controlled by a parent company based in the British Virgin Islands.

According to the Supreme Court, being the transaction an intra-EU one, the circumstance that the parent company was based in a black-listed Country is irrelevant.

TAX RESIDENCE OF COMPANIES FOR CIT PURPOSES IS RELEVANT ALSO FOR REGISTER TAX PURPOSES

According to the Italian Supreme Court, the rules for establishing companies tax residence in Italy (which can be found in Art. 73 of the **TUIR**) by referring to its place of effective management is to be considered a general criteria that applies also for the **Italian register tax** purposes.

Accordingly, in order to assess whether a real estate property transfer may benefit from the fixed sum tax provided for by transfer to companies resident in the EU, the interpreter has to assess the location where the companies involved have their place of effective management.

AGREEMENT ON THE POSTPONEMENT OF THE APPLICATION OF DIGITAL SERVICE TAXES

According to the Italian Ministry of Economy and Finance's press release of 15 February 2024, Austria, France, Italy, Spain, the United Kingdom and the United States of America have renewed, up until 30 June 2024, the transitional regime that postpones the effectiveness of digital services taxes. This is in light of the future adoption of the OECD Pillar One.

In fact, the signature of the Multilateral Convention implementing **Pillar One** is planned for the first half of 2024, the final text of which should be ready by March.

FIRST-HOME REGISTER TAX RELIEFS APPLY ALSO FOR INDIVIDUALS MOVING ABROAD

The Italian Tax Authorities has issued its **Circular letter** no. 3 of 16 February 2024 which provides clarifications on certain recent amendments to the Italian register tax.

In particular, as of 14 June 2023, Article 2 of **Law Decree** no. 69/2023 amended the conditions to access to the so-called first-home register tax relief for taxpayers moving abroad.

The relief is allowed for purchasers moved abroad for work reasons, who have resided or carried out their activity in Italy for at least five years, provided that the property purchased is located in the municipality of birth or in the municipality where they had their residence or carried out their activity before the transfer.

IMPLEMENTING PROVISIONS OF THE INVESTMENT MANAGEMENT EXEMPTION (1)

The Ministerial Decree date 22 February 2024 contains the implementing provisions of the so-called investment management exemption (Article 162(7-*ter*), (7-*quater*) and (7-*quinquies*) of the TUIR).

The decree declines the independence requirements of the foreign fund and the asset manager with respect to the fund.

In relation to the foreign fund, Italian **CIVs** and AIFs, for example, are considered independent.

With regard to the asset manager, it is required that:

- it does not hold positions in the management and/or control bodies of the investment vehicle or its subsidiaries;
- it does not hold a participation in the profits of the investment vehicle (or in its subsidiaries) for more than 25 per cent (this also includes participations in the profits of entities belonging to the same group as the asset manager, i.e. entities linked by a controlling relationship).

IMPLEMENTING PROVISIONS OF THE INVESTMENT MANAGEMENT EXEMPTION (2)

The Italian Tax Authorities has issued the **Ordinance** no. 68665 of 28 February 2024 clarifying certain features needed to implement Article 162(7-*quater*)d) of the TUIR on the so called investment management exemption, which provides that the asset manager's remuneration must comply with fair market valuer principle. This existence of this requirement needs to be proved through an appropriate documentation.

In particular, for "investment management services" (e.g. purchase, sale and trading of financial instruments and loans, administration of funds raised, investment marketing activities):

- the comparable uncontrolled price method (CUP) is the most appropriate method;
- If, however, the asset manager and the investment vehicle assume the same economically significant risks, and the price comparison method is not applicable, the most appropriate method is the profit split method;
- if, in addition, none of the methods lead to reliable results, another method recommended by the OECD Guidelines may be used.

For ancillary services (e.g. legal advice, studies, researches and analysis in financial matters, services of an administrative or accounting nature, etc.), the methods are to be chosen (on a case-by-case basis) from those outlined in the OECD Guidelines.

THE ITALIAN GOVERNMENT PROVIDES FOR CLARIFICATIONS ON THE FRONTIER WORKERS REGIME

The Ministry of Economy and Finance, in its answers to parliamentary questions nos. 5-02058 and 5-02061, provided clarifications on the taxation of **frontier workers** in Switzerland.

First of all, even for frontier workers applying the previous regime, it is sufficient that between the municipality of residence and the border with the other State there is a 20 km distance; on the other hand, it is not necessary for the activity to be performed in a "frontier" canton with respect to the municipality of residence.

Secondly, it has been clarified that the municipality falling within the 20 km radius are the ones listed in the annexes to the friendly agreement signed between Italy and Switzerland on 22 December 2023.

In a later amendment to the answers, it is clarified that the friendly agreement of 22 December 2023 is effective from 1 January 2024, so for "old" frontier works, the municipality of residence must be within 20 km from the border and must be included in the lists contained in the Italy-Switzerland Agreement of 3 October 1974.

REDUCED VAT RATE FOR HOSPITALITY ACTIVITES APPLIES REGARDLESS TO ANY SPECIFIC CERTIFICATION THE EUROPEAN COURT OF JUSTICE

The **European Court of Justice**, in its decision on Case C-733/22 of 8 February 2024, stated that the reduced VAT rate for services rendered in the hotel and hospitality sector cannot be tied to the possession of a specific certificate.

However, for the reduced rate to apply, an analysis of the concrete and specific elements of the activity must be carried out and the principle of tax neutrality must be respected.

THE EU COUNCIL REVISES THE EU BLACK-LIST

On 20 February 2024, the Council of the European Union carried out the periodic review of the European Union's black-list.

The Bahamas, Belize, Turks and Caicos Islands and Seychelles were eliminated from the list.

The updated list currently includes Anguilla, Antigua and Barbuda, Fiji Islands, Guam, US Virgin Islands, Palau, Panama, Russia, Samoa, American Samoa, Trinidad and Tobago and Vanuatu.
The next update is scheduled for October 2024

PROOFS OF AN INTRA-EU SUPPLY FOR VAT PURPOSES

According to the European Court of Justice (decision on the Case C-676/22 of 29 February 2024), if a supplier has supplied goods that have been transported to another Member State, VAT does not apply only if it is proven that the goods were supplied to a VAT person located in that other State and if the data to verify this quality are kept and available.

In the case at stake, however, the transaction was considered to be a VATable one as the it was not proved:

- that seller have transferred the right to dispose of such good to the persons reported as buyer in the relevant documentation;

that the goods had been supplied to VAT person registered for tax purposes in another EU Member State

THE OECD HAS PUBLISHED A REPORT ON AMOUNT B OF PILLAR ONE

On 19 February 2024, the Inclusive Framework on BEPS of the OECD has published the report on Amount B of Pillar 1 which provides a simplified approach to the application of the arm's length principle to basic marketing and distribution activities.

The approach responds to the request of certain developing Countries to make relevant amendments to the OECD transfer pricing guidelines.

The content of the report has been incorporated into the OECD Transfer Pricing Guidelines.

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