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### UCRAINE DECREE

The following measures aimed at combating the economic effects of the Ukraine crisis are adopted under the Italian law-decree 21 of 21 March 2022 (Ukraine decree), as published in the Italian Official Gazette 67 of 21 March 2022.

### PETROL VOUCHER FOR EMPLOYEES

The amount of the value of petrol vouchers or similar titles granted by companies to their employees for free in 2022 does not add to taxable income from employment pursuant to section 51 (3) of the Italian Tax Code (TUIR), if they do not exceed EUR 200.

### TAX DEDUCTION FOR THE PURCHASE OF ELECTRICITY

Businesses

- with electrical energy meters with an available power of 16.5 kW or more,
- other than energy-intensive entities a the decree issued by the Italian ministry for economic development (MISE) on 21 December 2017,

are recognized a tax credit of 12 percent of the expenses incurred for the purchase of electricity, that is actually used

in the second quarter of 2022, provided that the price calculated on the average relating to the first 2022 quarter, net of taxes and any contingent state aids, recorded an increase of the per kWh cost of more than 30 percent compared to the same average price relating to the same quarter of 2019.

### TAX DEDUCTION FOR THE PURCHASE OF GAS

Businesses other than natural gas-intensive undertakings pursuant to article 5 of the Italian law-decree 17/2022 are recognized a tax credit of 20 percent of the expenses incurred for the purchase of gas consumed in the second calendar quarter of 2022 for energy uses other than thermo-electric uses, provided that the reference price for natural gas - calculated as an average for the first 2022 quarter of the reference prices of the MI-GAS intra-day market published by GME - recorded an increase of more than 30 percent of the corresponding average price relating to the same quarter of 2019.

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The above-mentioned tax credits:

- can be used by 31 December 2022, without any limitations, through set-off only;
- do not add neither to the taxable income from business nor to the regional tax on productive activities tax base;

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- may be combined with other incentives granted for the same costs, provided that such combination does not exceed the cost incurred, whereby it must be taken into account that they do not add to taxable income and to the tax base for regional tax on productive activity.

The tax credit may be assigned as a whole only by eligible businesses to other taxpayers, with any subsequent assignment being excluded. It may be assigned another two times only if it is assigned to banks and financial intermediaries, without prejudice to the provisions under section 122-bis (4) of the Italian law-decree 34/2020. In the event of an assignment of the tax credit the eligible businesses apply for a tax compliance certificate relating to the data contained in the documentation that proves that the requirements entitling to the tax credit are fulfilled.

### TAX-CREDIT FOR ENERGY- AND GAS-CONSUMING COMPANIES

The tax credit under section 4 of the Italian law-decree 17/2022 is increased by 25 percent.

The tax credit under section 5 of the Italian law-decree 17/2022 is increased by 20 percent.

The tax credit under section 15 of the Italian law-decree 4/2022 and under section 4 and section 5 of the Italian law-decree 17/2022 recognized to energy-consuming companies and to natural gas-intensive undertakings can be used by 31 December 2022,

- assigned as a whole only, with no subsequent assignment being allowed. It may be assigned another two times only if it is assigned to banks and financial intermediaries, without prejudice to the provisions under section 122-bis (4) of the Italian law-decree 34/2020.

The detailed arrangements for the exercise of the options shall be set forth in a decision by the director of the Italian tax authority. Such decision must be adopted no later than 30 days from the date of entry into force of the Ukraine decree conversion law.

### PAYMENT BY INSTALMENTS OF ELECTRICITY BILLS

Companies with registered office in Italy that are final consumers of electricity and natural gas may file an application for payment by instalments of the amounts owed for energy consumption relating to May 2022 and June 2022 (no more than 24 monthly instalments) with their relevant suppliers with registered office in Italy.

### TAX CREDIT FOR THE TOURISM INDUSTRY

Tourism and accommodation businesses, including businesses of the exhibitions and fairs industry, thermal baths and theme parks, including water and wildlife parks, are recognized a tax credit equal to 50 percent of the municipal property tax (IMU) paid as second instalment for 2021, on properties registered under land register category D/2, in which the accommodation business is carried out, provided that

- the relevant owners also operate the businesses carried out therein
- the taxpayers suffered a loss of turnover and daily proceeds in the second quarter of 2021 of at least 50 percent compared to the same period of the year 2019.

The tax credit

- may be used, without any limitations, as set-off only;
- does not add to taxable income for income tax purposes and to the net value of production for regional tax on productive activities (IRAP) purposes.

The tax incentive applies within the limits and conditions set out in the European Commission Communication as of 19 March 2020 C (2020) 1863 final "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak".

The provision hereunder shall be effective only upon authorization by the European Commission pursuant to article 108 (3) of the Treaty on the Functioning of the European Union.

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### EXCEPTIONAL CONTRIBUTION TO SURGING ENERGY PRICES

In 2022 an exceptional solidarity contribution is set forth to be levied

- upon those who generate electricity in Italy for subsequent sale;
- upon those who generate methane gas and extract natural gas,
- upon those who resell electricity, methane and natural gas,
- upon those who generate, distribute and trade oil products,
- upon those who finally import electricity, natural or methane gas, oil products to resell them subsequently or who introduce such assets to Italy from other EU countries.

The contribution is not owed by those who organise and manage platforms for the exchange trade of electricity, gas, environmental certificates and fuels.

The exceptional solidarity contribution is calculated at 10 percent:

- of the increase in the balance between active and passive transactions relating to the period from 1 October 2021 until 31 March 2022 compared to the balance of the period from 1 October 2020 and 31 March 2021,
- if such increase exceeds EUR 5,000,000 (the contribution is not owed if the increase is lower than 10 percent).

The balance is calculated based on the total active transactions, net of VAT, and the total passive transactions, net of VAT, as shown in the Reports on the data relating to periodic VAT payments.

The contribution is calculated and paid by 30 June 2022 by using the F24 payment form and is not deductible from income tax and regional tax on productive activities (IRAP).

### MILLEPROROGHE DECREE

The following provisions are introduced under the Italian law 15 of 25 February 2022, which converted the Italian law-decree 228/2021 (so-called "Milleproroghe").

### DISTANCE MEETINGS

The meetings of companies, associations and foundations may be held at distance until 31 July 2022, regardless of whether this is provided for in the relevant articles of associations.

### LOSSES OF THE YEAR

For losses of the business year closed on 31 December 2021:

- the provisions contained in section 2446 (2) and section 2446 (3), section 2447, section 2482-bis (4), section 2482-bis (5) and sections 2482-bis (6) as well as in section 2482-ter of the Italian civil code do not apply;
- the winding-up reason due to reduction or loss of the corporate capital under section 2484 (1.4) and section 2545-duodecies of the Italian civil code does not apply.

### TAX CREDIT FOR INVESTMENTS IN OPERATIONAL ASSETS

The "longer" deadline for investments booked by 31 December 2021 eligible for a tax credit on investments in operational assets under section 1(1054) and section 1 (1056) of the Italian law 178/2020 (Italian 2021 Budget Law) is extended until 31 December 2022 (previously it was set forth on 30 June 2022).

### REGIONAL TAX ON PRODUCTIVE ACTIVITIES (IRAP) PAYMENT

The payment deadline - without penalties and interest be-

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ing owed - of the 2019 balance of the regional tax on productive activities (IRAP) and the first prepayment of the same tax for 2020, which were not paid in accordance with section 24 of the Italian law-decree 34/2020, but subsequently proved to be owed due to the failure to comply with Community thresholds, is extended until 30 June 2022.

### HOME IMPROVEMENT TAX DEDUCTIONS

Even the expenses incurred for the tax compliance certificate and the sworn report on the appropriateness of the expenses incurred between 12 November 2021 and 31 December 2021 are eligible for deduction in the context of home improvement tax deductions other than the 110 per cent super bonus (the deductibility of expenses incurred as of 1 January 2022 is set forth under section 121 (1-ter) of the Italian law-decree 34/2020).

### TAX BENEFITS FOR "FIRST HOME" BUYERS

The deadlines set forth to benefit from the tax incentives for "first home" buyers and from the tax credit for the repurchase of a "first home" are suspended between 23 February 2020 and 31 March 2022. They start to take effect again as of 1 April 2022.

### PAYMENT BY INSTALMENTS OF TAX COLLECTION NOTICES

Taxpayers that as of 8 March 2020 are no longer eligible for payment by instalments of tax collection notices may file a new application for payment by instalments by 30 April 2022, with no need to pay the overdue instalments under the previous repayment plan. These taxpayers shall be no longer eligible for the "new" payment by instalments in the event of failure to pay 5 even not consecutive instalments.

### SUSPENSION OF AMORTIZATION AND DEPRECIATION

Taxpayers required to prepare the financial statements according to the provisions contained in the Italian civil code may suspend amortization and depreciation on tangible

and intangible fixed assets without any limitations also in the 2021 financial statements.

### RESTRICTIONS ON THE USE OF CASH

In 2022 the threshold for payments made in cash continues to be set forth at EUR 1,999.99.

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## DIRECT TAXES

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### VALUE ADJUSTEMENT AND REVALUATION

The Italian tax authority has provided the following clarifications on the value adjustment and revaluation of business assets in newsletter 6 of 1 March 2022.

In the event of a merger through acquisition during 2020 of a company acquired in 2019, the following options may not be exercised:

- neither the value adjustment of the higher values recorded due to the assignment of the merger deficit, since the value adjustment is limited to the mismatches existing in the 2019 financial statements, whereas in this case the mismatches arise in relation to the 2020 financial statements
- nor the revaluation, since the higher asset values of the assets recorded in the balance sheet only result from the allocation

of the merger deficit. However, if the total economic value of the company being acquired is higher than the recorded book value recorded for said assets due to the allocation of the merger deficit, the acquiring company may make use of the revaluation and record "new" higher values for the above assets and a revaluation reserve as a contra account.

If the fiscal values are adjusted in value to the statutory value recorded in the balance sheet, a tax suspension constraint must be placed on the net equity items for an amount equal to the adjusted values. It is not allowed to recognize the higher book values for tax purposes, if the net equity of the balance sheet is "insufficient" compared to the higher values to be "adjusted", even if this is due to losses carried forward.

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The tax suspension constraint must apply also to reserves already charged with statutory liens of unavailability and non-distributability.

As to the payment of substitute tax, the reserve under tax suspension - recorded either after value adjustment or after revaluation - does not add to the tax base at its book value, i. e. "net" of the substitute tax paid. Hence, the clarifications provided to the contrary in previous documents (e. g. newsletter 14/E (2017), newsletter 13/E (2014) and newsletter 18/E (2006)) must be deemed void.

The omitted, insufficient and/or late payment of the substitute tax is irrelevant for the option for value adjustment or revaluation. In such events, the substitute tax is not recorded as tax liability and taxpayers may avail themselves of the scheme on the voluntary correction of errors.

The revaluation for free also applies to the hotel industry and even to holding companies that lease properties to controlled companies for the exercise of the hotel business. The revaluation also applies to companies that exercise a hotel business not as their main business with regard to the properties used for such purpose.

Furthermore, the option for value adjustment under section 110 of the August decree may be exercised validly by filing an income tax return (so-called late income tax return) within 90 days from the expiry of the regular deadline for the filing of income tax returns.

### DIVIDENDS

The presumption of priority distribution of profits generated until the business year closed on 31 December 2017 is applicable, regardless of the nature of the holding (qualifying or non-qualifying) and the recipient of the profits. This shall also apply in the event in which the presumption is irrelevant for the tax treatment of dividends since they are subject to a withholding tax (Italian tax authority, answer to request for advance ruling 163 of 30 March 2022).

### INCOME FROM EMPLOYMENT

If the employer sells to its employees goods at a price equal to the normal value net of "usual discounts", the amount equal to the discount is not taxable upon the employee (Italian tax authority, answer to request for advance ruling 158 of 25 March 2022).

### SALE OF A BUSINESS BRANCH

A sale of business occurs in the event of sale of even only some of the assets that are significant for the conduct of a pharmaceutical business such as (i) the pharmaceutical products' trademarks underlying certain active agents, (ii) the marketing authorizations for the pharmaceutical product, (iii) the product dossier and (iv) the stock of inventory. Indeed, such assets form an organisational business structure, since they include a series of elements that, if combined among each other, form an organization which is potentially appropriate, as a whole, for the conduct of an autonomous business, even in the absence of further elements such as tangible fixed assets and personnel (Italian tax authority, answer to request for advance ruling 151 of 23 March 2022).

### MERGER LEVERAGED CASH OUT

A merger leveraged cash out is deemed to be designed to avoid tax whenever (i) a debt is created artificially to assign liquidity, without resolving upon a distribution of profits or capital, since debt repayment is sufficient; (ii) deductible interest expenses pursuant to section 96 of the Italian Tax Code (TUIR) are deducted (Italian tax authority, answer to request for advance ruling 142 of 21 March 2022).

### VAT

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#### ASSIGNMENT OF THE PRELIMINARY AGREEMENT

If the objective and the subjective requirements are met, the assignment of the preliminary agreement and the partial repayment of the deposit is subject to VAT (Italian tax authority, answer to request for advance ruling 95 of 4

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March 2022).

### **INTRA-COMMUNITY SALE THROUGH AGENTS**

The rules on non-taxable intra-Community sales under section 41 (1a) of the Italian law-decree 331/1993 apply even in the event of sale through an undisclosed agent (contract whereby commission is payable) (Italian tax authority, answer to request for advance ruling 101 of 10 March 2022).

### **VAT CREDIT/DEBIT NOTES**

A VAT credit note cannot be issued after expiry of the limitation period of the claim due to the creditor's unjustified inactivity, not even in the event in which a bankruptcy procedure has been opened and concluded in the meantime (Italian tax authority, answer to request for advance ruling 102 of 10 March 2022).

### **TAX ASSESSMENT**

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The minutes drafted in the context of an amicable tax settlement procedure and signed not only by the tax authorities but also by the taxpayer form a document that may be used for evidential purposes in a tax judgement even in the event of non-completion of the procedure (Italian Supreme Court, judgement 6391 of 28 February 2022).

Yours sincerely,

HAGER & PARTNERS



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