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DECREE ON TAX INCENTIVES

The Italian law-decree no. 39 dated 29 March 2023 (published in the Italian Official Gazette no. 75 dated 29 March 2024) introduced urgent tax measures, which are effective since 30 March 2024.

REPEAL OF OPTIONS FOR TAX CREDIT TRANSFER AND DISCOUNT ON INVOICE

All cases in which to exercise the options for tax credit transfer or discount on invoice are repealed (save for some exceptions).

The option continues to be permissible for the works under article 119 (1-ter), (4-ter) and (4-quater) of the Italian law-decree no. 34/2020 performed on properties damaged by earthquakes in the Italian regions of Abruzzo, Lazio and Umbria on 6 April 2009 and as of 24 August 2016 (the derogation is still applicable up to EUR 400 million for the year 2024, of which EUR 70 million for earthquakes occurred on 6 April 2009).

Furthermore, the tax credit transfer or discount on invoice continue to be permissible in the following cases before 30 March 2024:

- the sworn notice on the commencement of works (CILA) under article 119 (13-ter) of the Italian law-decree no. 34/2020 has been filed, if works are eligible for incentives under article 119 and are different from those carried out by the condominium co-owners;
- the shareholder resolution by which the performance

of the works was approved has been adopted and the sworn notice on commencement of works (CILA) under article 119 (13-ter) of the Italian law-decree no. 34/2020 has been filed, if works are eligible for incentives under article 119 and carried out by condominium co-owners.

- the application for the acquisition of the permit has been filed, if the works are eligible for incentives under article 119 of the Italian law-decree no. 34/2020 and require the demolition and the reconstruction of the buildings;
- the application for the permit, if any, has been filed, if the works are different from those eligible for incentives under article 119 of the Italian law-decree no. 34/2020;
- the works have already been commenced or if works have not been commenced yet, a binding agreement between the parties on the provision of goods and services for the works was concluded and a prepayment on the price paid, if works are different from those eligible for incentives under article 119 of the Italian law-decree no. 34/2020 and no permit must be filed for them.

Furthermore, as to the expenses for the removal of architectural barriers, tax credit transfer or discount on invoice continue to be applicable for expenses incurred:

- until 30 March 2024;
- after 30 March 2024 but only in relation to works for which the permit application has been filed previously, where necessary, and the works have been

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commenced or, in the event in which works have not been commenced yet, a binding agreement between the parties on the provision of the goods and services for the works has been concluded and a prepayment on the prices has been made, if no permit must be filed for the works.

EXCLUSION FROM VOLUNTARY SETTLEMENT ("REMISSIONE IN BONIS")

The voluntary settlement (*remissione in bonis*) does not apply in relation to the duty to notify the Italian tax authority of the options for tax credit transfer or discount on invoice, not even if remaining instalments unused for deductions relating to expenses incurred in previous years are transferred.

Notices on the exercise of the options submitted from 1 April 2024 to 4 April 2024 relating to expenses incurred in the year 2023 and to the transfer of the remaining unused instalments of expenses incurred in the years from 2020 to 2022 may be replaced by 4 April 2024.

SUBMISSION TO ENEA OF DATA RELATING TO BUILDING IMPROVEMENT TAX DEDUCTIONS

To collect the information required for monitoring expenses on the performance of works eligible for tax incentives, taxpayers who incur expenses eligible for energy efficiency tax incentives under article 119 of the Italian law-decree no. 34/2020 must submit the following additional information on subsidised works to ENEA (Italian Agency for New Technologies, Energy and Sustainable Economic Development), in addition to the one to be submitted to ENEA upon completion of the works under article 16 (2-bis) of the Italian law-decree no. 63/2013:

- land registry data relating to the property on which the works are carried out;
- the amount of the expenses incurred in the year 2024 as at 30 March 2024;
- the amount of expenses which will foreseeably be incurred after 30 March 2024 in the years 2024 or 2025;
- the percentages of the tax deductions receivable for expenses under b) and c).

Furthermore, the taxpayers who incur expenses for earthquake-resistant works under article 119 of the Italian law-decree no. 34/2020 must submit the following information on the subsidized works to the Italian portal on the classification of earthquake-resistant works ("*Portale*

nazionale delle classificazioni sismiche"):

- land registry data relating to the property on which the works are carried out;
- the amount of expenses incurred in the year 2024 as at 30 March 2024;
- the amount of expenses which will be foreseeably incurred after 30 March 2024 in the years 2024 or 2025;
- the percentages of the tax deductions receivable for expenses under b) and c).

The above information and the relevant amendments must be submitted by taxpayers:

- that by 31 December 2023 filed a sworn notice on commencement of works under article 119 (13-ter) of the Italian law-decree no. 34/2020 or the application for the acquisition of a permit for the demolition and the reconstruction of the buildings and that on the same date had not concluded the works;
- that filed a sworn notice on commencement of works under article 119 (13-ter) of the Italian law-decree no. 34/2020, or the request for the permit required to demolish and reconstruct the buildings, as of 1 January 2024.

The content, and the terms and conditions of the above notices, shall be set forth by a decree to be adopted within 60 days (29 May 2024).

If data on works that have been commenced are not submitted within the deadlines set forth, a penalty of EUR 10,000 applies.

If data on works for which the sworn notice on commencement of works or the application for the acquisition of the permit for the demolition and the reconstruction of the buildings must be submitted by 30 March 2024, are not submitted, the tax incentive will be forfeited.

LIMITS ON THE USE OF BUILDING IMPROVEMENT TAX DEDUCTIONS

If there are pending tax demands for state taxes or notices issued by the Italian tax authority:

- for amounts exceeding a total of EUR 10,000 - for which the thirtieth day after the expiry of the payment terms has already elapsed and for which no suspension orders have been issued or no forfeiture of payment by instalments has occurred - the set-off

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under article 17 of the Italian legislative decree no. 241/1997, of the tax credits under article 121 of the Italian law-decree no. 34/2020 recorded on the electronic platform, is suspended up to the recorded amounts.

- for amounts exceeding a total of EUR 100,000 - for which the payments terms have expired and for which there are no suspension or payment by instalments orders - the set-off under article 17 of the Italian legislative decree no. 241/1997 is excluded, save for the tax credits under e), f) and g).

TRANSFER OF NID CREDITS

The possibility to subsequently transfer NID credits already transferred is repealed.

SPECIAL VOLUNTARY SETTLEMENT

The special voluntary settlement under article 1 (174) of the Italian law no. 197/2022 is extended to all yearly instalments until 2022. The payment deadline is set forth on 31 May 2024 not only for the one-off payment but also for the removal of the breach.

DIRECT TAXES

CORPORATE WELFARE

The Italian tax authority provides clarifications on corporate welfare with special reference to the tax news introduced under section 51 (4) of the Italian Tax Code (TUIR) by article 3 (3-bis), 3 (3-ter) of the Italian law decree no. 145/2023 (Anticipi decree) (Italian tax authority, newsletter no. 5 of 7 March 2024).

The exclusion from taxation under article 51 (2 f) of the Italian Tax Code (TUIR) for <<the use of the works and services recognized by the employer voluntarily or in accordance with provisions contained in contracts or agreements or corporate regulations offered to employees in general or to a category of employees and family members>> for the purposes under article 100 (1) of the Italian Tax Code (TUIR) may include sustainable mobility services offered to employees commuting from their home to their workplace and vice-versa, such as:

- (i) car-sharing limited to the use of e-vehicles only,
- (ii) charging of e-cars or motor bikes,
- (iii) bike sharing,
- (iv) scooter sharing limited to the use of e-vehicles only,
- (v) electric scooter,
- (vi) use of local means of transport (single ticket or train, underground, bus, ferry etc. season tickets) (Italian tax authority, answer to request for advance ruling no. 74 as of 21 March 2024).

WITHHOLDING TAX ON INSURANCE BROKERS' FEES

The Italian tax authority provides clarifications on the repeal of the exemption from the application of the withholding tax on the fees payable to insurance agents and brokers. The withholding tax under article 25-bis of the Italian DPR no. 600/1973 must now be deemed applicable to all fees - however named - owed for insurance brokerage activities, even if they are ancillary to the main activity, obtained by those registered with the RUI (*Registro Unico di Intermediazione*) under the sections e) and f), for services rendered directly to insurance companies (Italian tax authority, newsletter no. 7 of 21 March 2024).

TAX DEDUCTION FOR THE PURCHASE OF EARTHQUAKE-PROOF HOMES

The Italian tax authority provides clarifications on the tax incentives for the purchase of earthquake proof homes under article 16-bis of the Italian law-decree no. 63/2013 if on the date of purchase of the property unit the "structural" works on the building, on which the demolition and reconstruction works, and not also the "finishing" works, have been completed (Italian tax authority, resolution no. 14 of 8 March 2024).

EMPLOYEE PRODUCTIVITY BONUS

The advantageous scheme of employee productivity bonuses under article 1 (182 seq.) of the Italian law no. 208/2015 does not apply if "incremental" corporate objectives are missing (Italian tax authority, answer to request for advance ruling no. 59 of 5 March 2024).

CORRECTION OF ACCOUNTING MISSTATEMENTS

The correction of accounting misstatements made in the 2022 financial statement relating to the leasing fees not recorded in the 2019, 2020 and 2021 business years becomes relevant for corporate tax (IRES) and regional tax

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on productive activities (IRAP) purposes under article 8 (1-bis) of the Italian law-decree no. 73/2022.

In 2022 the leasing fees are deductible for the share not deducted in the 2019, 2020 and 2021 tax years only, within the limits of the amount that would have been deductible in each single business year under article 102 (7) of the Italian Tax Code (TUIR). In other words: deduction is permitted for the amount "crystallized" in the single tax year affected by the accounting misstatement.

However, to determine the NID base relating to the 2019, 2020 and 2021 tax years a supplementary tax return must be filed for the single tax years affected by the accounting misstatements (Italian tax authority, answer to request for advance ruling no. 73 of 21 March 2024).

MERGER AND CONCOMITANT DIVISION - ABUSE OF RIGHT

The following transaction is deemed abusive:

- merger by absorption of two companies in a third company (all three shareholders have equal shareholdings and belong to the same family/household),
- concomitant total asymmetric division of the absorbing company in favour of the three newly incorporated beneficiaries, each wholly owned by each of the three original shareholders,

where each single company resulting from the division is assigned the real estate originally held by each single company participating in the merger (Italian tax authority, answer to request for advance ruling no. 89 of 29 March 2024).

VAT

TELEPHONE LINE BURYING WORKS

The contract for telephone line burying works may benefit from the reduced VAT rate - pursuant to no. 127-septies of the table enclosed to the Italian DPR no. 633/1972 - if it is ascribable to infrastructure works. For this purpose, the works must regard a new construction from scratch, e.g. if the transfer and burying of the telephone line requires the construction of underground cable ducts. On the contrary, the reduced VAT rate does not apply if the works are limited

to the mere transfer and burying of already existing cable ducts (Italian tax authority, answer to request for advance ruling no. 61 of 6 March 2024).

UNDUE VAT REFUND

The application for refund of undue VAT under article 30-ter of the Italian DPR no. 633/1972 may be filed by the seller/service provider within the limitation period of two years from reimbursement to the seller/service provider of VAT unduly applied.

Hence, the seller/service provider (obliged party) may request refund of undue VAT to the seller/service provider only. This applies also if the latter was subjected to a bankruptcy procedure (Italian tax authority, answer to request for advance ruling no. 66 of 11 March 2024).

GIFT AND INHERITANCE TAX

The preferential exemption scheme from gift and inheritance tax under article 3 (4-ter) of the Italian legislative decree no. 346/1990 for the transfer of shares does not apply if a shareholding is donated to descendants already in possession of a controlling shareholding (Italian tax authority, answer to request for advance ruling no. 72 of 18 March 2024)