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TAX INCENTIVES DECREE: AMENDMENTS DURING CONVERSION INTO LAW

The Italian law decree 39/2042 (so-called “Agevolazioni” decree) was amended and converted into the Italian law 67/2024 and published in the Italian Official Gazette 123 of 28 May 2024.

HOME IMPROVEMENT TAX DEDUCTIONS

The transfer and the use of home improvement tax deductions have been further restricted during conversion into law.

More specifically, the deduction of expenses incurred in 2024 relating to the superbonus, the architectural barriers bonus, the sismabonus and the “sismabonus for purchases” are divided into 10 annual instalments (whereas the tax credits arising from transfers or discounts on invoice continue to be deducted respectively over 4 or 5 years).

As of 2025, banks, financial intermediaries and insurance companies shall not be allowed to set off tax credits for home improvement tax deductions against social security contributions and INAIL accident insurance premiums. Furthermore, the instalments usable as of 2025 relating to the superbonus, the architectural barrier bonus and the sismabonus (including the sismabonus for purchases) are repartitioned over 6 years for tax credits purchased at a price lower than 75 percent of the amount of the corresponding deductions.

Remaining deduction instalments not yet used in the income tax return may no longer be transferred.

Special provisions that vary according to the Italian regions are introduced for tax credit transfer and discount on invoice relating to works on properties located in earthquake hidden regions and eligible for the superbonus deduction.

Finally, if there are pending tax demands or notices issued by the Italian tax authority, as of 1 July 2024:

- total amounts of more than EUR 10,000 - for which the 30th day from the payment deadline has already expired and there are no suspension provisions or entitlement to payment by instalments has not forfeited yet - the use for offset (article 17 of the Italian legislative decree 241/1997) of the tax credits under article 121 of the Italian law-decree 34/2020 reported in the electronic platform is suspended up to the pending amounts.
- total amounts of more than EUR 100,000 - for which the payment deadlines have expired and no suspension or payment by instalments orders exist - the use for offset (article 17 of the Italian legislative decree 241/1997) is excluded, save for the tax credits pursuant to lit. e), f) and g) of the same decree.

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REPAYMENT OF R&D TAX CREDITS

The deadline for the repayment of R&D tax credits used for offset, accrued as of the tax period following the one ongoing on 31 December 2014 and until the tax period ongoing on 31 December 2019 is postponed until 31 October 2024.

Taxpayers, who have already applied for access to the R&D tax credit repayment procedure and who have not provided for repayment by a single instalment or of the first instalment may withdraw from the application in full by 30 September 2024.

5.0 TRANSITION PLAN

In addition to the periodic reports companies must send to GSE regarding the progress of the project, a further communication will be added to prove the execution of the orders accepted by the seller with a down payment of at least 20% of the acquisition cost, which must be sent within thirty days of the tax credit being reserved, otherwise the tax benefit will expire.

The latest possible date for completion of the investment entitling the tax credit is 31 December 2025.

DIRECT TAXES

SHORT-TERM LEASES

The Italian tax authority provides clarifications on the tax news on short-term leases (Italian tax authority, newsletter no. 10 of 10 May 2024).

PROVISIONAL SCHEME ITALIAN LEGISLATIVE DECREE 461/1997

The provisional scheme of the financial income reform under article 14 (9) of the Italian legislative decree 461/1997 provided that it was possible for equity investments not traded on regulated markets, already owned on 28 January 1991 to take over the actual market value of the company on such date, as specified in a dedicated appraisal sworn by a qualified expert rather than

the purchase cost or value. However, for this purpose, it was required to report the appraisal value and the data relating to the expert who drew up the appraisal in the subsidiary's income tax return of the business year ongoing on 1 July 1998.

If no such data was reported in the company's income tax return, the shareholders are not allowed to use the value determined based on the appraisal as tax cost of the equity investment (Italian tax authority, answer to request for advance ruling no. 101 of 10 May 2024).

FOREIGN FUNDS

A pension fund under Canadian law (white list country):

- with the same substantive requirements and the same investment purpose of an Italian pension fund,
- administered and managed by a supervised Company,
- which is investing in an Italian real estate fund through a vehicle company resident in Canada and wholly owned by the Company on behalf of the Pension Fund,

applies the exemption scheme provided for under article 7 (3) of the Italian law-decree 351/2001 on the income distributed by the Italian Fund (Italian tax authority, answer to request for advance ruling no. 104 of 20 May 2024).

TAX CREDIT FOR 4.0 INVESTMENTS

In the event of purchase of an asset already used by the purchaser on the basis of a rental agreement is not eligible for the tax credit for 4.0 investments in new operational assets since the novelty requirement is missing (Italian tax authority, answer to request for advance ruling no. 109 of 21 May 2024).

DONATION OF SHARES OF A NON-RESIDENT COMPANY

An individual resident in Italy, who was donated shares of a company not resident in Italy, takes as value of the same the purchase cost or value of the shares held by the donor and increased of any related cost (Italian tax authority, answer to request for advance ruling no. 114 of 23 May 2024).

FLAT TAX ON RENTAL INCOME (CEDOLARE SECCA)

The owner/landlord may opt for flat tax on rental income (*cedolare secca*) even if the tenant concludes a residential

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lease agreement for the exercise of her or his professional activity, since the exclusion under article 3 (6) of the Italian legislative decree 233/2011 refers solely to leases of residential properties entered into by owners/landlords acting as entrepreneurs, artists or professionals (Italian Supreme Court, judgement no. 12395 of 7 May 2024).

VAT

NON-EXISTING TRANSACTIONS

In order to exclude that the purchaser is involved the VAT fraud committed upstream in the production or distribution chain, and to provide evidence that the purchaser used the utmost diligence required of a prudent professional operator, the Italian tax authority may not pretend from the purchaser to carry out complex and in-depth checks similar to those that only the Italian tax authority itself would have the means to carry out (Italian Supreme Court, judgement no. 14102 of 21 May 2024).