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### BI-ANNUAL TAX SETTLEMENT PROPOSAL ("CONCORDATO PREVENTIVO BIENNALE")

By implementing the enabling Italian law on tax reform, Title II of the Italian Legislative Decree no. 13/2024 on tax assessment procedures regulates the new bi-annual tax settlement scheme for minor taxpayers.

It allows to "determine the business income or the income from arts and professions and the net production value on a bi-annual basis".

The Ministerial Decree of 14 June 2024, approving the method through which the proposal for settled income and production value with reference to the tax base for IRPEF/IRES and IRAP purposes for taxpayers required to apply ISA will be elaborated, was published in the Italian Official Gazette no. 139 as of 15 June 2024.

Please find outlined below the most significant features of this scheme.

#### 1. Personal scope

The bi-annual tax settlement proposal applies to minor taxpayers, which are holders of business income or of income from self-employment (arts and professions) activities carried out in Italy.

More specifically, the following taxpayers may benefit from the new tax settlement scheme:

- i. taxpayers applying the tax reliability indexes (ISA);
- ii. taxpayers applying the flat tax scheme.

#### 2. Eligibility requirements

As regards the tax period prior to the one which the tax settlement proposal refers to, the taxpayers (applying the tax reliability indexes (ISA) or the flat tax scheme)

- must not have tax debts or
- must have paid his or her tax debts, which are equal or higher than EUR 5,000, including interest and penalty payments, arising from taxes managed by the Italian tax authority or from finally assessed social security contributions within the deadline for the acceptance of the proposal.

Debts payable by instalments or under tax suspension do not add to the EUR 5,000 threshold until the relevant benefits are forfeited.

#### 3. Reasons for exclusion

The tax settlement scheme does not apply in the presence of the following reasons for exclusion:

- failure to file the tax returns;
- conviction for tax offences;
- start of business activity in the previous tax period.

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As regards the **conviction for tax offences**, taxpayers that have been convicted for one of the following offences in the last three tax periods before the one in which the tax settlement proposal applies are not eligible for the tax settlement proposal:

- tax offences under the Italian legislative decree no. 74/2000 (fraudulent tax returns by using false invoices or other ploys, unfaithful or omitted tax returns, invoices or other documents issued for non-existing transactions, concealment or destruction of accounting documents, omitted payment of certified withholding taxes, omitted VAT payment, undue offset of taxes, fraudulent evasion of payment of taxes);
- false corporate notices (article 2621 of the Italian civil code);
- money laundering (article 648-bis of the Italian criminal code);
- handling of stolen money, goods or utilities (article 648-ter of the Italian criminal code);
- self-laundering (article 648-ter1 of the Italian criminal code).

#### 4. Temporal scope of application

The provisions on the bi-annual tax settlement proposal are applicable as of the tax period following the one ongoing on 31 December 2023.

Taxpayers adhering to the flat tax scheme may apply the bi-annual tax settlement proposal on an experimental basis for the 2024 tax period only.

#### 5. Accounting and filing obligations

As to the tax periods included in the tax settlement proposal:

- the ordinary obligations (i) to keep accounting records and (ii) to file tax returns continue to be in force for taxpayers that apply the ISA;
- the obligations under article 1 (54 - 89) of the Italian law no. 190/2014, however, continue to be in force for flat tax payers. Basically, the ordinary obligations under the scheme must be complied with.

#### 6. Eligibility procedure

The bi-annual tax settlement proposal is formulated by the Italian tax authority at the end of a procedure under article 8 and article 9 of the Italian legislative decree no. 13/2024 based, inter alia, on the data to be communicated to the Italian tax authority by the taxpayer.

More specifically, the Italian tax authority, by 1 April of each year, **makes available to the taxpayer and his or her intermediaries, even through the use of electronic networks, dedicated IT programmes for the acquisition of the data required to prepare the proposal.**

According to the Italian tax authority's provisions no. 68687 and no. 68629 (approval of the 2024 REDDITI PF form and the 2024 ISA form) dated 28 February 2024, the above-mentioned data must be communicated by filling out:

- field P of the 2024 ISA form for taxpayers applying ISA;
- section VI of the LM field of the 2024 REDDITI form for taxpayers using the flat tax scheme.

Furthermore, the above-mentioned fields allow to visualize and to accept the proposal for settled income.

For taxpayers applying the ISA, the reporting regarding 2024 shall be done via the software "Il tuo ISA 2024 CPB" version 2.0.0 of 15 June 2024. Among other things, this software allows the calculation of the proposal and the transmission of the respective acceptance.

As at the date of this newsletter, the software for reporting the data and transmitting the relevant acceptance has not yet been published for taxpayers under the flat tax scheme. The software will be published at 15 July 2024.

Therefore, taxpayers under the flat tax scheme and taxpayers applying the ISA become eligible for the new scheme by filing the 2024 REDDITI form.

#### 7. Acceptance of proposal

By accepting the proposal formulated by the Italian tax authority, the taxpayer **undertakes to declare the amounts settled in the income tax and the IRAP tax returns for the tax periods covered by the bi-annual tax settlement proposal.**

The remedy of late submission of documents ("*remissione*")

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*in bonis*") does not apply in the event of adherence to the bi-annual tax settlement scheme.

The acceptance of the proposal by the taxpayers under article 5 of the Italian Tax Code (TUIR) (partnerships and similar taxpayers) and under article 115 and article 116 of the Italian Tax Code (TUIR) (corporations under the tax transparency regime) **is binding also upon shareholders and associate members** (article 12 (1) of the Italian legislative decree no. 13/2024).

### 8. Determination of the settled income

Bi-annual tax settlement proposals are formulated based on a method (approved with ministerial decree of 14 June 2024) that uses the following data:

- provided by taxpayers via a dedicated electronic platform made available by the Italian tax authority;
- relating to ISA forms;
- available in the Italian tax authority's databases.

The "contingent" or non-recurring income items must be valued on a single item basis.

#### Measures aimed at the graduation of the tax settlement proposal

Full tax reliability (i.e. ISA = 10) is achieved gradually at the end of the bi-annual tax settlement period. The proposal for the ongoing tax period on 31 December 2024 regarding business and self-employment income and net production value takes into account:

- the declared income for the ongoing tax period on 31 December 2023;
- the higher income identified through the method set out in Annex 1 of the ministerial decree of 14 June 2024 reduced by 50%.

#### Settled income

##### a) Self-employed income

calculated by the Italian tax authority with reference to article 54 (1) of the Italian Tax Code (TUIR);

#### items not taken into account:

- capital gains and losses (article 54 (1-bis and 1-bis.1 of the Italian Tax Code (TUIR));
- income or shares of income from investments in partnerships or associations under article 5 of the Italian Tax Code (TUIR).

##### b) Business income

calculated by the Italian tax authority with reference to:

- article 56 of the Italian Tax Code (TUIR) for individual income taxpayers (IRPEF);
- section I of chapter II of title II of the Italian Tax Code (TUIR) for corporate taxpayers (IRES);
- article 66 of the Italian Tax Code (TUIR) for minor taxpayers.

#### items not taken into account:

- realised capital gains under article 58, article 86 and article 87 of the Italian Tax Code (TUIR);
- contingent assets under article 88 of the Italian Tax Code (TUIR);
- contingent losses and assets under article 101 of the Italian Tax Code (TUIR);
- income or income shares from investments in companies, associations, bodies or EEIGs;
- tax losses under article 8 and article 84 of the Italian Tax Code (TUIR).

##### c) Net production value

calculated by the Italian tax authority with reference to article 5, article 5-bis and article 8 of the Italian legislative decree no. 446/97

#### items not taken into account:

- capital gains and contingent assets;
- capital losses and contingent liabilities.

##### d) Income of taxpayers under the flat tax scheme

calculated by the Italian tax authority according to the calculation method

#### items not taken into account:

deductible social security contributions.

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The settled income/net production value must not amount to less than EUR 2,000.

### Actual settled income

In any case, for the purpose of determining the actual settled income, the balance of capital gains, contingent assets, capital losses and contingent liabilities and of the income from investments determines a corresponding variation of the settled income, as provided for under the single applicable provisions.

### Tax losses

Thereafter, with specific reference to business income, the income arising from the above-mentioned variations must also be reduced by taking into account the tax losses realised in the previous tax periods, as provided for under article 8 (individual income taxpayers (IRPEF)) and article 84 (corporate taxpayers (IRES)) of the Italian Tax Code (TUIR).

## 9. Tax prepayments

The tax prepayment relating to the tax periods covered by the tax settlement proposal is calculated based on the settled income.

If the tax prepayment is payable in two instalments, for 2024:

- the first instalment is calculated according to the ordinary rules;
- the second instalment is determined by the difference between the total prepayment owed calculated based on the settled income and the first instalment paid.

## 10. Effects of the bi-annual tax settlement

Generally, a higher or lower actual income, if any, or a higher or lower actual net production value, if any, realised in the tax period covered by the bi-annual tax settlement, is irrelevant for the purpose of determining the income taxes and the regional tax on productive activities (IRAP).

However, there are several exceptions to this rule. More

specifically:

- the settled income may vary due to capital gains, capital losses, contingent assets or liabilities, income from investments, tax losses (as specified above);
- exceptional circumstance (set forth under ministerial decree of 14 June 2024, see below) that give rise to a lower actual income or to a lower actual net production value of more than 50 percent compared to the one settled under the bi-annual tax settlement scheme, as of the tax period in which such difference arises.

The taxpayer may pay social security contributions on the actual income, if such income is higher than the settled one.

NB: The adherence to the bi-annual tax settlement has no effects for VAT purposes, since VAT continues to apply according to the ordinary rules.

### Income relevant to tax benefits

Hence the settled income suggested by the Italian tax authority is not taken into account

- in all cases where reference is made to the possession of income requirements to determine or to have the entitlement to deductions, tax relief or benefits of any kind, including non-tax benefits, recognized;
- for household economic status index purposes (ISEE - indicatore della situazione economica equivalente).

## 11. Unfavourable exceptional circumstances

Exceptional circumstance that give rise to a lower actual income or to a lower actual net production value of more than 50 percent compared to the one settled under the bi-annual tax settlement scheme, as of the tax period in which such difference arises.

This concerns the following events:

- natural disasters, for which the state of emergency is declared;
- other extraordinary events, which resulted in damage to the business premises to an extent

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that makes them totally or partially unfit and no longer suitable for use, significant damage to inventories such as to cause an interruption of the production cycle, the inability to access to the business premises, or the interruption of the business activity, where the sole or main customer is a subject having interrupted the business activity due to said events;

- ordinary liquidation, compulsory administrative liquidation or judicial liquidation;
- lease of the single company;
- interruption of the business activity for administrative purposes with notification to the Chamber of Commerce, or interruption of the entrepreneurial activity by notifying the relevant association/order or social security fund.
- exemption from the tax compliance certificate for the offset of tax credits for more than EUR 70,000.00 per year relating to VAT and for no more than EUR 50,000.00 per year relating to direct taxes and IRAP;
- exemption from the tax compliance certificate or from submitting a bank guarantee for VAT refunds of no more than EUR 70,000.00 per year;
- exclusion from the application of the rules for dormant companies;
- exclusion from tax assessments based on mere assumptions under article 39 (1.d, second sentence) of the Italian DPR no. 600/73 and article 54 (2, second sentence) of the Italian DPR no. 633/72;
- time limits for tax assessments brought forward by one year;
- exclusion from the determination of total income on a single item basis under article 38 of the Italian DPR no. 600/73, as long as the assessable total income does not exceed the declared income by two thirds.

### Adjustment of the bi-annual tax settlement proposal.

The unfavourable exceptional circumstances (identified above) that lead to the ineffectiveness of the bi-annual tax settlement proposal (with the exception of liquidation and business lease) represent conditions that also lead to a reduction of the proposed income and production value for 2024. In fact, a reduction in the following measure is applied if they subsist (which the taxpayer must report in the Modello CPB, line P03, codes 1-3, or in line LM62 of the REDDITI PF form):

- by 10%, if the extraordinary events resulted in the interruption of the business activity for 30 to 60 days;
- by 20%, if the interruption of the business activity exceeded 60 days and was up to 120 days;
- by 30%, if the interruption of the business activity exceeded 120 days.

The extraordinary events resulting in a reduction of the settled income must have occurred in the tax period ongoing on 31 December 2024 and, in any event, on a date prior to the adherence to the tax settlement scheme.

## 12. Benefits

### Reward scheme

Taxpayers applying ISA requirements and adhering to the bi-annual tax settlement may benefit from the reward scheme under article 9-bis (11) of the Italian law-decree no. 50/2017. More specifically:

### Exclusion from assessments

The tax periods covered by the bi-annual tax settlement may not be subjected to the tax assessment under article 39 of the Italian DPR no. 600/73. However, also taxpayers that apply the bi-annual tax settlement scheme may be subjected to tax accesses, investigations or assessments that may result in being disqualified from the scheme.

**Assessment activities against taxpayers that do not adhere to the bi-annual tax settlement scheme or are disqualified from the scheme are intensified.**

However, the rejection of the proposal does not automatically have any negative consequences for the persons concerned, with particular reference to the assessment of their tax reliability level, which remains subject to specific risk analyses.

## 13. Termination

The bi-annual tax settlement proposal becomes ineffective if:

- during the two years covered by the bi-annual tax settlement proposal the activity carried out changes compared to the one carried out in the

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tax period before the two years covered, unless the same ISAs apply to the new activity (or the new activity belongs to an industry to which the same profitability indexes apply, if the flat tax scheme is used);

- the business activity has ceased.

The bi-annual tax settlement proposal becomes ineffective as of the tax period in which the above-mentioned events occur.

#### 14. Non-eligibility reasons

If a non-eligibility reason arises, both tax periods covered by the tax settlement proposal will be affected, regardless of the tax period in which the breach occurred.

More specifically, the following non-eligibility reasons apply:

- assessment of undeclared assets or non-existence/deductibility of declared liabilities;
- supplementary tax return (article 2 (8) of the Italian DPR no. 322/98);
- amount of income different from the one on which the tax settlement proposal is based;
- stating of data in the income tax return not consistent with the one filed for tax settlement proposal purposes;
- omitted filing of tax returns;
- conviction for tax offences under the Italian legislative decree no. 74/2000 or for the offences of false corporate notices, money laundering, self-laundering and use of stolen money, goods or utilities;
- arising of tax debts;
- omitted payment of taxes under the tax settlement further to automated assessments (article 12 of the Italian legislative decree no. 13/2024);
- detection of breaches that constitute tax offences under the Italian legislative decree no. 74/2000;
- inaccurate or incomplete communication of data relevant for ISA purposes so as to determine a lower income or net production value for the tax settlement proposal;
- omitted filing of income tax returns, IRAP, withholding agent or VAT tax returns;
- detection of breaches relating to the submission of electronic daily proceeds or the issuance of tax receipts, till receipts and transportation

documents;

- evading inspection and verification of mandatory accounting documents or other documents, even if not mandatory, whose existence is known for certain;
- omission to install or tamper with the devices for issuing tax receipts and tampering with electronic data acquisition devices.

Some non-eligibility reasons may not apply if the taxpayer remedies the breach by voluntary correction of errors ("*ravvedimento operoso*"). For this purpose, however, the breaches must not have already been ascertained and no accesses, inspections or audits of which the taxpayer has formal knowledge must have commenced.

#### 15. Renewal of the tax settlement proposal

Upon expiry of the period falling under the tax settlement proposal, the Italian tax authority will formulate another proposal relating to the subsequent two years, as long as the taxpayer continues to fulfil the eligibility requirements and as long as there are no reasons for exclusion thereof.

For the sake of completeness, we point out that at the date of this newsletter, the Legislative Decree correcting the tax reform providing for certain amendments of the discipline of the settlement currently in force, has been approved in preliminary examination by the Council of Ministers and has been assigned to the relevant parliamentary committees for the preparation of their opinions by 1 August.

After the entry into force of the above-mentioned corrective Legislative Decree, the amendments introduced by it will be communicated.

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Yours sincerely,

HAGER & PARTNERS