



NEWSLETTER NO. 12 - 2024

09 August 2024 Page 1/4

DIRECT TAXES

PARTICIPATION EXEMPTION SCHEME FOR EU OR EEA COMPANIES

The Italian tax authority provides clarifications on the participation exemption scheme applicable to capital gains from the sale of qualified equity investments by EU or EEA companies, as provided for under article 68 (2-bis) of the Italian Tax Code (TUIR).

As to the subjective scope of application, the scheme applies to companies and trade entities subject to a tax equal to the Italian corporate tax IRES in their country of residence.

As to the objective scope of application, it is clarified that for foreign IAS adopters the requirement that the equity investment be recorded under the financial fixed assets may be inferred from accounting documents, if they are provided with a time stamp ("data certa") on the same day as, or prior to, the date of approval of the financial statements. Whereas for those who prepare the financial statements based on local accounting principles, in accordance with directive no. 2013/34/EU the classification of the equity investments adopted therein is deemed valid (Italian tax authority, newsletter no. 17 of 29 July 2024).

REDUNDANCY INCENTIVES

The special scheme for "impatriated" workers set forth under article 16 of Italian legislative decree no. 147/2015 is applicable to amounts paid as "redundancy incentives" and "settlement amounts" if employees meet the eligibility requirements for this special scheme.

If the sums are subjected to separate taxation, once they have received the notice on the results of the tax settlement, employees may contact the Italian tax authority to benefit from the special scheme. The Italian tax authority will verify the requirements for the application of such scheme and reassess the tax owed by adding the relevant income as a reduced amount, as provided for under such special scheme, to the total income of the year in which the incentives or amounts are received (Italian tax authority, resolution no. 40 of 23 July 2024).

REIMBURSEMENT TO EMPLOYEES FOR SPORTING ACTIVITIES

The reimbursement of expenses for sporting activities practised by the employee's family members may be exempted from tax, as provided for under article 51 (2) (f-bis) of the Italian Tax Code (TUIR), if they are practised as part of "initiatives included in the school's educational plans" (Italian tax authority, answer to request for advance ruling no. 144 of 3 July 2024).

NEWSLETTER NO. 12 - 2024

09 August 2024 Page 2/4

EXCEPTIONAL CONTRIBUTION ON EXCESS PROFITS

For the purposes of the solidarity contribution under article 1(115-119) of the Italian law no. 197/2022, the (released) revaluation reserve under article 110 of the Italian law-decree no. 104/2020 must be deemed included in the net equity and hence added to the determination of the 25 percent threshold (Italian tax authority, answer to request for advance ruling no. 158 of 15 July 2024).

CONTRIBUTION UNDER THE "REALIZZO CONTROLLATO" SCHEME

The corporate restructuring through:

- the joint contribution of shares held by shareholders (individuals) to a newly incorporated holding company under the special tax scheme ("realizzo controllato"), as provided for under article 177(2-bis) of the Italian Tax Code (TUIR),
- and the subsequent contribution - under this special tax scheme under article 177 (2-bis) of the Italian Tax Code (TUIR) - by each shareholder of the share acquired in the holding company to four newly incorporated single-member holding companies, each of which is wholly owned by the conferring party only,

does not constitute an abuse (Italian tax authority, answer to request for advance ruling no. 160 of 24 July 2024).

ADVISORY SERVICES RENDERED BY DIRECTORS

The fees for professional advisory services paid to directors are deductible if they are set forth under the articles of association or a resolution previously adopted by the meeting of shareholders, as are the fees paid for servicing as directors (Italian Supreme Court, judgement no. 20591 and no. 20613 of 24 July 2024).

VAT

REFUNDS TO NON-RESIDENTS

Non-residents that do not have an Italian VAT number may request a refund of the VAT paid on purchases in Italy, as provided for under article 38-bis2 of the Italian DPR no. 633/1972. However, once the deadline set forth therein has expired, the non-resident may no longer recover the VAT in excess caused by such purchases in Italy. In such a case, if several years have expired from the purchase, it is not permitted to make of use the so-called "anomalous" refund, as provided for under article 30-ter, by prior "retroactive" assignment of a VAT number (Italian tax authority, answer to request for advance ruling no. 147 of 11 July 2024).

VAT ADJUSTEMENT NOTES

Likewise, VAT payers are not entitled to "anomalous" refunds under article 30-ter of the Italian DPR no. 633/1972 if the deadline for the issuance of the VAT credit note has expired and this right has not been exercised due to failure to act on their part (Italian tax authority, answer to request for advance ruling no. 153 of 15 July 2024).

VAT SCHEME FOR TRAVEL AGENCIES

Fees paid in exchange for the right to prepare, to promote and to market tourist packages do not fall under the special VAT scheme under article 74-ter of the Italian DPR no. 633/1972, since these packages do not constitute services rendered to the customer. Hence, VAT on such fees may be deducted according to ordinary rules, as provided for under article 19 of the Italian DPR no. 633/1973 (Italian tax authority, answer to request for advance ruling no. 155 of 15 July 2024).

OFFSETTING THRESHOLD

Raising the threshold for offsetting VAT, as provided for under article 34(1) of the Italian law no. 388/2000, to EUR 2 million resulted in a partial 'abolitio criminis'. Consequently, infringements resulting from exceeding

NEWSLETTER NO. 12 - 2024

09 August 2024 Page 3/4

previous thresholds are not punishable, unless they exceed the EUR 2 million threshold, which applies retroactively (Italian Supreme Court, judgement no. 18377 of 5 July 2024).

601/1973. Since the loan taken out abroad is not subject to substitute tax it is assumed that also the deeds of voluntary mortgage concluded to secure the same loan may not benefit from the substitute tax scheme, and that hence the regular taxes must be applied on the same (Italian tax authority, answer to request for advance ruling no. 150 of 11 July 2024).

REVERSE CHARGE ON NON-EXISTING TRANSACTIONS

In the event of non-existing transactions subjected to VAT under the reverse charge scheme, the VAT debt is owed anyway, whereas the VAT credit cannot be deducted (Italian Supreme Court, judgement no. 18730 of 9 July 2024).

CATEGORY F/4 PROPERTIES

The cadastral category of a property at the time of transfer only is relevant for the purpose of subjecting it to VAT or to registration, mortgage, and cadastral fees, while both the pre-existing category and the new classification that may possibly be attributed at the end of a property restructuring project are irrelevant.

TRANSFER OF AGRICULTURAL LAND

The transfer by way of expropriation of the ownership of agricultural land against payment of compensation to the owner of such land must be subjected to VAT, if such owner is a farmer who is a taxable person for VAT purposes and acting as such, even though he or she does not carry out any activity relating to the marketing of property and has not taken any steps to effect such a transfer (ECJ case 182/23 of 11 July 2024).

OTHER TAXES

SUBSTITUTE TAX ON LOANS

A medium-long term loan concluded abroad by a German bank and concomitantly secured by a mortgage registered with the Italian property registers does not benefit from the substitute tax under article 15 of the Italian DPR no.



A member of
Nexia
International

DOTTORI COMMERCIALISTI AVVOCATI REVISORI CONTABILI

I - 20122 **MILANO** . Via Borgogna 2 . Tel. 02 7780711 . Fax 02 778071233 . info.mi@hager-partners.it

I - 39100 **BOZEN/BOLZANO** . Musterplatz 2 P.zza della Mostra . Tel. 0471 971197 . Fax 0471 980202 . info@hager-partners.it

I - 00186 **ROMA** . P.zza della Rotonda 2 . Tel. 06 68805843 . Fax 06 68211765 . info@hager-partners.it

www.hager-partners.it

NEWSLETTER NO. 12 - 2024

09 August 2024 Page 4/4

ITALIAN CONSTITUTIONAL COURT: ALSO DE FACTO COHABITING PARTNERS ENTITLED TO FAMILY BUSINESS RIGHTS

With judgement no. 148 of 25 July 2024, the Italian Constitutional Court confirmed that the rules regulating work in family businesses must be extended also to de facto cohabiting partners.

facto cohabiting partners» work as a family business”.

Yours sincerely,

HAGER & PARTNERS

CASE

A female worker, after the death of the man with whom she permanently cohabited for more than 12 years, filed a legal claim against his heirs to ascertain the existence of a family business (relating to an agricultural business), and to be ordered to pay her share of the amount due to her as a participant in the business. Thereafter, the Italian Supreme Court raised issues of constitutionality of article 230 of the Italian civil code as to the part where it does not include the «de facto cohabiting partner» amongst family members and the business in which also «de facto cohabiting partners» work as a family business.

JUDGEMENT

The Italian Constitutional Court noted preliminarily that upon entry into force of the Italian law no. 76/2016 (the so-called Cirinnà law) all the rights of spouses are recognised also to the parties to civil unions between individuals of the same sex, whereas this does not apply to de facto cohabiting partners (couple of adults permanently united by bonds of affection and mutual moral and material assistance). According to the judges such differential treatment is unreasonable.

According to the Constitutional Court, even if there are still some differences in regulations compared to the family based on marriage, fundamental rights - including the right to work and right to a fair salary in the context of a family business - must be recognised without any distinction to spouses, civil partners and de facto cohabiting partners.

On these grounds the Court declared that “article 230-bis (3) of the Italian civil code is unconstitutional as to the part where it does not include the «de facto cohabiting partner» amongst family members and the business in which also «de