NEWSLETTER NO. 2 - 2025

DIRECT TAXES

PERMANENT ESTABLISHMENT AND FIXED PLACE OF BUSINESS IN THE DOUBLE TAXATION AGREEMENT BETWEEN ITALY AND THE US

According to the double taxation agreement currently in force between Italy and the US the self-employed income of an individual resident in State (A) is taxable in the other State (B) if there is a "fixed place of business" in that other State (B).

According to the Italian Supreme Court, the notion of a "fixed place of business" is not entirely identical to that of a "permanent establishment", which is a requirement for business income to be taxable in the other State (i.e. different from the state of residence). More specifically, according to earlier rulings by the Italian Supreme Court, the "fixed place of business" is a less stringent concept than the "permanent establishment", since professional services may be carried out in a manner that is completely "disconnected" from a site, from premises or a physical location: e.g. a mining engineer who performs consulting services for plants located in different places in the other State, and who has as his or her only fixed element an e-mail-address or a phone number, but nevertheless carries out his or her work for a long period in the other Contracting state and stays there; or a surgeon who works for various health care facilities and who also has no fixed place of business in the other state where he or she practices, but stays there to carry out his or her work.

Therefore, the notion of "a fixed place of business" must be understood not in the sense of a materially fixed place but in the sense of an income-producing activity which is physically carried out in the other State, on a continuous and non-occasional basis, and requires the taxpayer to continuously stay in the foreign State (Italian Supreme Court, judgement 2286 of 31 January 2025).

INCREASE OF COST RELATING TO INCREASE IN EMPLOYMENT

The Italian tax authority provided clarifications on the increase of the deductible cost recognized for an increase in employment, as provided for under the Italian law 207/2024 (2025 Budget Law) (Italian tax authority, newsletter 1 of 20 January 2025).

SUMS PAID UPON MUTUAL AGREEMENT TERMINATION

If an agreement between a service provider and a principal is terminated, advanced expenses reimbursed to the principal (individual) are not subject to tax; however, interest payments accrued on such sums - calculated based on the inflation rate (ISTAT) - constitute other income pursuant to article 67 (1.l) of the Italian income tax code (TUIR), since they originate from the assumption of an obligation to do, an obligation not to do, or an obligation to allow (Italian tax authority, answer to request for advance ruling 4 of 13 January 2025).

LEASE FEES

In accordance with article 109 (1) of the Italian income tax code, proceeds add to the income in the year of accrual: as

to lease fees, the year of accrual must be identified by referring to the date of accrual of the fees, regardless of the actual payment. Until the termination of the agreement, if any, lease fees may not qualify as positive items whose existence is uncertain or whose amount is unknown (Italian Supreme Court, judgement 2286 of 31 January 2025).

REPATRIATES ("IMPATRIATI") AND BRAIN GAIN ("RIENTRO DEI CERVELLI") TAX SCHEMES TO BE USED CUMULATIVELY

The tax benefit under article 44 of the Italian law-decree 78/2010 ("tax incentives for researchers residing abroad that return to Italy") for income earned in Italy from research activities can be used cumulatively with the tax benefit under article 5 of the Italian legislative decree 209/2023 for income from self-employment earned in Italy ("tax benefit for workers that return to Italy") (Italian tax authority, answer to request for advance ruling 16 of 28 January 2025).

DIVIDEND WASHING

The "dividend washing" phenomenon, which article 109 (3-bis) and (3-ter) of the Italian income tax code is meant to combat, is characterized as follows:

- company A sells the equity holdings of company X, "including dividends", to company B and realizes a capital gain by meeting the requirements for the partial tax exemption scheme under article 87 of the Italian income tax code:
- company B cashes in the dividends (partially) excluded from tax under article 89 of the Italian income tax code from company X;
- company B sells the equity holdings of company X, without needing to meet the requirements under article 87 of the Italian income tax code (i.e. no holding period) and realizes a capital loss deductible from tax.

Upon occurrence of such a case, the legislator sets forth that the capital loss is not deductible up to an amount equal to the non-taxable amount of dividends, or the prepayments made on them, obtained in the thirty-six previous months (Italian tax authority, answer to request for advance ruling 8 of 21 January 2025).

VAT

PARENT COMPANY MERGER: EFFECTS ON THE PERMANENT ESTABLISHMENT

After a merger by incorporation, whereby the absorbed company (parent company with permanent establishment in Italy) ceases to exist, it will be impossible to continue operations in Italy under the VAT number of such company.

However, upon creation of a new permanent establishment by the incorporating company, all assets and rights related to the permanent establishment of the absorbed parent company can be transferred in a tax-neutral way (Italian tax authority, *Principio di diritto n. 1* of 16 January 2025).

UPDATE OF TECHNICAL SPECIFICATIONS FOR ELECTRONIC INVOICING (v.1.9)

The Italian tax authority disclosed the new version of the technical specifications for electronic invoicing (version 1.9). The changes made to the new version take into account new legislative features.

More specifically, starting from 1 April 2025, the most important updates relate to:

- the introduction of code "Document type" "TD29" to report omitted or irregular invoicing to the Italian tax authority;
- the introduction of code "Tax scheme" "RF20" to identify the new cross-border VAT exemption scheme (pursuant to Title V-ter of the Italian DPR 633/72);
- the removal of the EUR 400 maximum threshold set forth for simplified invoices (article 21-bis of the Italian DPR 633/72 and ministerial decree of 10 May 2019), if the seller or service provider adhered to a flat tax scheme or to the cross-border VAT exemption scheme;
- update of the description of the document type TD20 "Self-billed invoice to regularize and supplement invoices (pursuant to article 6 (9-bis) of the Italian legislative decree 471/97 or article 46 (5) of the Italian law-decree 331/93)" (Italian tax authority, technical specifications of 31 January 2025).

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**

90 DAYS FOR ARRIVAL AT THE DESTINATION OF GOODS OF AN INTRA-COMMUNITY SALE WITH TRANSPORTATION OR SHIPMENT BY THE PURCHASER

In the event of an intra-Community supply under article 41 (1.a) of the Italian law-decree 331/1993, with goods being dispatched or transported to another Member state by the purchaser, or by a third-party on its behalf, a penalty of 50 percent of VAT applies, if the good does not arrive in such State within 90 days from delivery.

The penalty does not apply if the invoice is regularized within the 30 subsequent days and VAT paid.

However, there is no deadline to be met, if goods are directly dispatched or transported to the destination by a domestic supplier, or by a third-party on its behalf, under an intra-Community supply. In such a case, the seller must only prove that the goods have been transported to destination.

PRELIMINARY AGREEMENT AND THIRD-PARTY APPOINTMENT

Please note for VAT purposes

- that the price, or a part thereof, paid under a preliminary agreement for the sale and purchase of a property is a taxable transaction under article 6 (4) of the Italian DPR 633/1972. This means that the prospective seller is obliged to issue the relevant invoice to the payer and to specify the tax due;
- the right to deduct VAT arises at the time when the tax becomes payable, therefore the VAT payer who enters into the final agreement as appointed third-party pursuant to article 1402 of the Italian civil code cannot deduct the input tax paid by the promissory purchaser (even if the latter is not a VAT payer and hence did not deduct such tax) (Italian Supreme Court, judgement 1123 of 16 January 2025).

***

Sincerely yours

HAGER & PARTNERS