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### DIRECT TAXES

#### NON-DEDUCTIBILITY OF INTEREST PAYABLE FOR VOLUNTARY CORRECTION ("RAVVEDIMENTO")

Interest paid upon special voluntary correction pursuant to article 1 (174-178) of the Italian law 197/2022 is not deductible when determining income from self-employment. According to the Italian tax authority, such interest qualifies as "late interest" - that arises due to the taxpayer's failure to pay taxes within the deadlines set forth - and is therefore ancillary to the tax, and as such subject to the same treatment of tax non-deductibility (Italian tax authority, answer to request for advance ruling 56 of 3 March 2025).

#### LEGAL INCOME

If dividend distribution is waived by a shareholder - i.e. an individual not engaged in business activity - the tax value of the dividend is the same as its par value; hence, no contingent taxable asset arises for corporate tax (IRES) purposes pursuant to article 88 (4-bis) of the Italian tax code (TUIR).

Consequently, dividends are deemed "legally received" and must be subjected to withholding tax at 26 percent (Italian tax authority, answer to request for advance ruling 59 of 3 March 2025).

#### INDUSTRY 4.0 TAX CREDIT

It may happen, for the purposes of the industry 4.0 tax credit under article 1 (1051 - 1063) of the Italian law

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have been underestimated and thus the prepayment made for the investment proves to be less than 20 percent for reservation purposes. In such a case:

- the (unpredicted) ancillary expenses may still qualify for tax benefits based on the tax relief rules in the year in which they are incurred,
- the investment continues to be eligible for tax benefits under the tax relief rules for the year in which they have been reserved (Italian tax authority, answer to request for advance ruling 60 of 3 March 2025).

#### 4.0 AND 5.0 TRANSITION

To calculate the 4.0 and 5.0 Transition tax credit, it is clarified that:

- for investments made from 1 March 2024 until 29 March 2024 the business is required to submit a notice on completion of investments only;
- for investments made as of 30 March 2024 (date of entry into force of the Italian law-decree 39/2024), the business is required to submit (by filing the relevant form available on the GSE website):
  - an advance notice on their total amount and the estimated tax credit to be used for them;
  - a final notice once the investments are completed to update the data provided in the advance notice (Italian tax authority, answer to request for advance ruling 69 of 7 March 2025).

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### AGRI-PHOTOVOLTAIC SYSTEMS

The Italian tax authority provides clarifications on the tax rules for the production and the sale of electrical energy generated from agri-photovoltaic systems pursuant to article 4 (423) of the Italian law 266/2005 (Italian tax authority, answer to request for advance ruling 61 of 4 March 2025).

### TAX RELEVANT CORRECTION OF ACCOUNTING ERRORS

Income components recorded in the balance sheet after correcting accounting errors may be tax relevant for IRES (corporation tax) and IRAP (regional tax on productive activities) purposes, even if such correction refers to a classification error that gave rise to an incorrect temporal allocation of income components (e.g. if the entire cost of a fixed asset was charged to the income statement instead of the depreciation portion only).

For these rules to apply, the financial statements in which the error is corrected must be audited, whereas it is not necessary for the financial statements that contain the error to be audited as well (Italian tax authority, answer to request for advance ruling 63 of 4 March 2025).

### VALUE ADDED TAX

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#### VAT REFUND FOR WORKS ON THIRD-PARTY ASSETS

Article 30 (2.c) of the Italian DPR 633/1972 sets forth that taxpayers may request a refund of the excess deductible VAT, if it amounts to more than EUR 2,582.28 relating to the purchase or the import of depreciable assets.

Depreciable assets are to be understood as "capital goods" according to the EU Directive, and not as those defined as such for the purposes of Italian income tax.

Hence, if all legal requirements set forth under the regulations are met, the enterprise or the self-employed worker are entitled to a refund of the VAT paid even on improvement, transformation or extension works for the assets held - for a significantly long-term period of time - under a lease or a loan for use agreement.

In any case, it is necessary for the assets to be instrumental to the business activity for a medium-to-long period of time, so that they qualify as "investments", and not as operating expenses (Italian tax authority, decision 20 of 26 March 2025).

### CO-INTEREST AGREEMENTS

The amounts exchanged between two parties under a co-interest agreement pursuant to article 2554 of the Italian civil code constitute money transfers. Therefore, they do not fall within the scope of VAT, but must be classified as "out of scope" transactions pursuant to article 2 (3.a) of the Italian DPR 633/1972 (Italian tax authority, *Principio di diritto* n. 3 of 19 March 2025).

### WRONG VAT RATE

If a supplier applies a higher VAT rate than the one due (e.g. 22 percent instead of 10 percent), the purchaser is not entitled to deduct the full tax applied and charged (22 percent), but only the tax actually due (10 percent). The tax exceeding the one due (12 percent) may be claimed from the tax authorities by the supplier who paid the higher undue tax (Italian Supreme Court, judgement 4101 of 17 February 2025).

Instead, the purchaser may request a refund from the supplier. Only if a civil law action aimed at obtaining refund from the supplier proves to be impossible or excessively difficult (i.e. if the supplier is insolvent), the purchaser is entitled to seek refund directly from the tax authorities (Italian Supreme Court, judgement 3873 of 15 February 2025).

### REFUND GUARANTEE

A supplementary tax return to change the type of guarantee chosen for refund (i.e. certification on meeting the requirements to be considered "a virtuous taxpayer" instead of a guarantee) may be filed until the locally competent tax authority has completed the preliminary investigations and validated the payment order. Once the investigations are completed and the refund has been processed, it is no longer allowed to submit the supplementary tax return to change the type of guarantee chosen (Italian tax authority, answer to request for advance ruling 83 of 28 March 2025).

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### REAL ESTATE ADVISORY

Services performed for the sale of an existing property in Italy

- by a real estate agency in relation to technical advisory for the sale of a property
- by an advisor in relation to out-of-court legal advice for the cancellation of a mortgage on a property

qualify as "services related to real estate" and are subject to VAT in Italy, as provided for under article 7-*quater* (1.a) of the Italian DPR 633/1972 (Italian tax authority, answer to request for advance ruling 65 of 4 March 2025).

### REGISTRATION FEES

#### PRELIMINARY AGREEMENT

The Italian tax authority provided clarifications on the regulatory amendments relating to registration, mortgage and cadastral fees introduced under the Italian legislative decree 139/2024 to implement tax delegation, including those relating to preliminary agreements.

In this respect, it is confirmed that in addition to the proportional fees due on the deposit or the prepayment (if any) a fixed-amount fee is applied when signing a preliminary agreement; the fees paid when signing a preliminary agreement are then set off against the main fees due for the registration of the final agreement.

However, as a result of the regulatory amendments, there is no longer any distinction between the proportional fees due for the deposit (0.5 percent) and the prepayment (3 percent), but they are due at 0.5 percent in both cases.

Moreover, it is set forth that the proportional fees applicable to deposits/prepayments upon signing preliminary agreements must in no case exceed the fees applicable to the final agreement. "This is to avoid that the fees paid when signing a preliminary agreement must then be subsequently refunded; more specifically, this occurs for agreements on transactions subject to VAT" (Italian tax authority, newsletter 2 of 14 March 2025).

### REGIONAL TAX ON PRODUCTIVE ACTIVITIES (IRAP)

#### REDUCED TAX RATE IN THE BOLZANO PROVINCE

As of the tax period after the one ongoing on 31 December 2024, the IRAP (regional tax on productive activities) tax rate is reduced by 1.22 percentage points in the Autonomous Province of Bolzano for taxpayers that apply first-level (valid in the Autonomous Province of Bolzano) or second-level collective labour agreements, including agreements at territorial level - signed as of 1 January 2022 - or company agreements, signed by the most representative trade unions at provincial level or by their worker and trade union representatives (RSA and RSU) and filed in accordance with the law, and which have not expired and contain at least one additional territorial or company-specific salary element regularly paid in accordance with the relevant agreement.

The reduction also applies to taxpayers that pay performance-related bonuses introduced before 29 October 2024, in compliance with the relevant sector-specific territorial agreements (Provincial law of the Autonomous Province of Bolzano 11/2024).

### NAT CAT INSURANCE POLICIES

#### DEADLINE POSTPONED

The deadline set forth under article 1 (101) of the Italian law 213/2023 for signing nat cat insurance policies covering damages to business assets has been postponed (Italian law-decree 39/2025):

- to 1 October 2025 for medium-sizes enterprises, as defined under the Commission's delegated directive (EU) 2023/2775 of 17 October 2023;
- to 31 December 2025 for small and micro enterprises, as defined under the delegated directive (EU) 2023/2775.

The deadline of 31 March 2025 is confirmed for large enterprises, as defined under the delegated directive (EU) 2023/2775.

As to the signing of nat cat insurance policies, the Italian Ministry for Enterprises and Made in Italy (MIMIT) (FAQs of 1 April 2025) clarified that the obligation relates to:

- enterprises with registered office in Italy and enterprises with registered office abroad and a permanent establishment in Italy that are required to register with the Companies' Register (excluding agricultural enterprises under article 2135 of the

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Italian civil code),

as regards

- the assets used for the conduct of the business recorded under item B-II, no. 1), 2) and 3) of Assets, pursuant to article 2424 of the Italian civil code, even if the same are not owned by the enterprise.

However,

- assets already covered by a similar insurance policy, even if signed by parties other than the entrepreneur who uses the assets;
- real estate under construction recorded under the item B-II, no. 5);
- real estate subject to building abuse or built without the required permits or encumbered by abuse that arose after the date of construction;
- enterprises that do not hold - under any title - assets recorded under the item B-II, no. 1), 2) and 3);
- vehicles registered with the public vehicle registry (PRA) are excluded from such obligation (Italian Ministry for Enterprises and Made in Italy (MIMIT), FAQs of 1 April 2025).

### LEGAL UPDATES

#### DAMAGE COMPENSATION FOR LOSS OF PROFIT IN THE EVENT OF EARLY REDELIVERY OF THE PROPERTY DUE TO THE TENANT'S DEFAULT

The United Sections of the Italian Supreme Court ruled in their very recent judgement no. 4892 of 25 February 2025 on the liability for damage compensation in the event of lost profit resulting from the termination of a (residential) lease agreement due to the tenant's default, where the property was returned prior to the originally agreed termination date.

In this respect there were two contrasting judicial interpretations.

According to a first and less widespread interpretation, supported by the judges of first and second instance in the case under examination, an early redelivery of the leased property, prior to the originally agreed termination date, excludes any residual damage to the landlord (more specifically, the failure to receive rental payments until the termination date of the agreement) since the landlord's assets

are deemed to be adequately reinstated upon the redelivery of the property and thus the material restoration of its enjoyment.

According to a second and prevailing interpretation, which the United Sections have endorsed, the redelivery of the property to the landlord occurred in the meantime does not neutralize the damage suffered due to the failure to receive rental payments that would have been due until the termination date of the agreement. This is because the mere redelivery of the property does not satisfy the landlord's interest in the indirect enjoyment of the property (which, according to this prevailing view, consists of the landlord's ability to receive the agreed-upon rental payments in exchange for granting the use of the leased property to others) until the property is leased again.

Based on these premises, albeit with the necessary clarifications, the United Sections decided to follow the second and prevailing interpretation and recognized the landlord's right under article 1223 of the Italian civil code to damage compensation for loss of profit upon early termination of the lease agreement due to the tenant's default. Loss of profit consists in the failure to receive the agreed-upon rental payments until the termination date of the agreement or until a new tenant is found. This right to compensation for damage is not extinguished by the redelivery of the leased property prior to the originally agreed termination date.

As to damage, the Italian Supreme Court further clarified that the landlord must prove that, as soon as possession of the property was regained, he or she promptly took action to secure a new lease with third parties. This means that the landlord's damage cannot be "automatically" assumed to equal to the total amount of rental payments not received.

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Sincerely yours

HAGER & PARTNERS