RSM PALEA LAURI GERLA

Associazione professionale di Studio Palea, Studio L4C, Studio Gerla Associati

TAX NEWS

2015 –1

RSM

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LAW AND REGULATIONS

Italian–Swiss agreement on the exchange of tax information (Ministry of Economy and Finance, press release of January 16th, 2015) (Swiss State Secretariat for International Financial Matters, press release of January 16th, 2015)

In these months, during which the legislation called "Voluntary Disclosure" on the regularization of foreign capital has attracted a lot of attention (see the Tax News "special focus" section contained in this issue and in the previous one), the news related to the agreement reached between Italy and Switzerland for the exchange of tax information is circulating.

More in details, the two Countries have reached an agreement in principle, which, in the next weeks, will lead to the signing of a Protocol which amends the current Convention against double taxation: the amendment will provide the Tax Authorities of the two Countries with powers in line with the current OECD standards for the exchange of information "on demand", allowing the Italian Revenue Agency to obtain information about the Italian citizens who have capital in Switzerland.
More specifically, the objectives of this agreement are the following:

- ☐ improvement of the Convention in order to avoid double taxation agreement (DTA) between Switzerland and Italy;
- ☐ switch to the OECD standard for the exchange of information on request;
- ☐ removal of Switzerland from the Italian Black List;
- ☐ transition to future automatic exchange of information;
- ☐ improvement of the current Agreement on cross-border workers;
- ☐ improvement of the market access for financial services providers.

The signing of the agreement will lead to tangible effects on the cost of the *Voluntary Disclosure* procedure in the presence of assets held in Switzerland and to be regularized (i.e. reduction of the number of fiscal years subject to the regularization and reduction of applicable penalties).

Invoicing to the Public Administration: new VAT regime of the "Split Payment" (Ministry of Economy and Finance, Decree dated January 30th, 2015)

In the Tax News issue of December 2014 the several tax news introduced by the Legge di Stabilità (i.e. Stability Law) have been pointed out.
With reference to the VAT field, besides the legislation that broadens the scope of the "reverse charge" to new cases, the mechanism called "Split Payment", concerning the services rendered to the Public Administration, has been introduced.

Briefly, according to the new discipline, entered into force with the Decree of January 30th, 2015:

- ✓ those who sell goods / provide services to the Public Administration shall issue an invoice showing the VAT, but with the annotation "split payment";

- ✓ the Public Administration, upon payment, will financially recognize only the taxable amount and it will directly pay the VAT to the Exchequer: (therefore, in case of goods sold for Euro 10,000 with a Vat amount of Euro 2,200, the amount that shall be paid to the supplier will be equal Euro 10,000);

- ✓ the supplier will bookkeep the invoice as usual, without including the VAT, which, as a consequence, will not participate in the periodic payment.

The services rendered by those who are subject to the withholding tax are not included in the *Split Payment* discipline, and , therefore, independent professionals are also excluded.

The entities that can be considered as Public Administration and that fall within the scope of the new discipline are the following:

- ☐ the State and the State organs;
- ☐ Territorial Public Bodies (regions, municipalities, etc.) and syndicates between themselves;
- ☐ the Chambers of Commerce, Industry, Crafts and Agriculture;
- ☐ university institutes;
- ☐ ASL (i.e. Local Health Authority Service);
- ☐ hospitals, public Bodies for hospitalization and health care with a prevailing scientific character;
- ☐ welfare, charitable and social security public Bodies.

Since the application of the Split Payment will lead suppliers to generate receivables for VAT purposes, the inclusion of such subjects within the categories of taxpayers for which the VAT refunds will be carried out as a priority is provided for.

The Split Payment applies to transactions invoiced from January 1st, 2015, for which the tax collectability shall occur after the same date.

JURISPRUDENCE

Vat – effects due to a wrong management of the reverse charge (EU Court of Justice, judgment of December 11th, 2014, lawsuit C-590/13)

As well-known and, unfortunately, pointed out many times, in Italy there is a very formalistic approach to the (complex) tax legislation. This leads to frequent challenges of formal violations (that is without any prejudice to the Exchequer) and to the fact that such a rigorous approach is also endorsed by the case law.

One of the (several) issues on which the misalignment between "form and substance" is clear is the one related to Vat violations, in case of transactions subject to the reverse charge").

What happens if a transaction subject to the reverse charge is not properly recorded by the purchaser?

- Is the right to tax deduction lost?
- Is the purchaser subject to sanctions, and if so, to what extent?

With reference to the first question, the Court of Justice has issued a recent judgment, which has criticized the rigid positions of the Italian Revenue Agency, which sometimes does not recognize the right to VAT deduction.

As a matter of fact, it has been mentioned that:

- within the self-assessment regime, the fundamental principle of VAT *neutrality* requires that the deduction of the input tax is allowed if the *substantial requirements* are fulfilled, even if certain formal requirements were omitted by the taxpayers;

- in the field of the intra-community transactions , such substantial requirements provides that, as stated in article no. 17, paragraph 2, letter d), the VI Directive, the purchases carried out by a taxpayer, that this latter also have to pay the VAT related to such purchases and that the goods in question are used for the purposes of his own taxable transactions.

The position of the European Court should therefore stop any related controversy (it shall be reminded that also the case law of the Court of Cassation has provided not precise interpretations on such issue).

Unfortunately, the second problematic issue has not been submitted to the European judges. Such issue arises from formal violations in the field of the reverse charge, meaning the legitimacy of the sanctions applicable by the Italian Tax Authorities.
As a matter of fact, it shall be considered that article no. 6 of the Italian Legislative Decree no. 471/97 provides the following:

"the purchaser who, while carrying out business, crafts or professions, does not pay the tax on the purchase of goods and services by means of the reverse charge mechanism is punished with an administrative sanction between *100 and 200 percent* of the tax.
...
The same sanction applies to the seller who has irregularly charged the tax in the invoice, omitting the payment.
Should the tax be paid, though irregularly, by the purchaser or by the seller, provided that the right to deduct the administrative sanction is equal to 3 percent of the tax irregularly paid".

Therefore, the Italian law provides the application of the sanctions whose amount is even *equal to the tax (!)* irregularly paid and it is doubtful that such a measure is in line with what has been stated by the European judges, who, in the past, have legitimized only the sanctions that in their amount are *proportionate* to the loss of revenue caused.

FOCUS ON EMPLOYMENT

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1) Jobs Act: the first implementation decrees in February (Il Sole 24 Ore, 20 January 2015, page 5)

Almost all of the Jobs Act implementation decrees should be ready by the end of February, regarding: (i) revision of contract types; (ii) reorganisation of social shock absorbers; (iii) active labour market policies; (iv) creation of a national Employment agency; (v) establishment of an Inspection agency; and (vi) reconciliation of free time and work.

2) Jobs Act: dual system for labour proceedings (Il Sole 24 Ore, 26 January 2015, page 4)

When the new contract becomes effective with protection measures increasing with seniority, currently being discussed by parliamentary Commissions, there will be a dual system for labour litigation regarding dismissals. On one hand, for newly hired individuals with a long-term contract the arbitration procedure used in cases of dismissal for objective justified reason will no longer apply, nor the abbreviated trial procedure if the dispute turns into a lawsuit. Instead, both of these procedures will continue to be used for employees in companies with more than 15 employees, who were hired before the aforesaid decree became effective. Thus, if the text of the decree remains unchanged, in the future cases may occur where the same incident disputed by different workers will be judged with two separate cases, because they are subject to different trials, and with the application of different procedures.

3) Jobs Act: NASPI (unemployment benefits) progressively decreased after the first quarter (Italia Oggi, 15 January 2015, page 41)

The new unemployment benefits (NASPI), which will be introduced with one of the implementation decreases of the Jobs Act still being discussed, would be due to all employees who involuntarily lose their job (with the exception of those hired by public administrations and farm workers), including cases of dismissal for just cause, as well as cases of consensual termination for a dismissal procedure for objective justified reason. The amount of NASPI should decrease progressively by 3% per month starting from the first day of the fourth month of benefits.

4) CCNL Dirigenti Industria: (national labour contract for industry managers): lower notice compensation and for unjustified termination (Italia Oggi, 13 January 2015, page 27)

The 30 December 2014 agreement to renew the CCNL Dirigenti Industria, valid from 1 January 2015 to 31 December 2018, has lowered the substitute notice compensation and the supplementary compensation for cases of unjustified dismissal of managers. The new benefits, which increase with seniority in the event of unjustified dismissal, will not be applied for cases of layoff of managers, including in order to avoid a duplication of benefits.

5) Ministry of Labour and Social Policies: procedure applicable to cases of dismissal for temporary workers (Il Sole 24 Ore, 13 January 2015, page 39)

The Ministry of Labour and Social Policies, with response to the request for a ruling no. 1/2015 submitted by the National Council of employment consultants and Trade Union of employment consultants, clarified that for cases of dismissal for objective justified reason, by a temporary employment agency, with at least 5 employees hired with long-term contract in the same province and working under a public

contract for temporary services for 36 months, the individual dismissal laws will be applicable and not layoff laws.

6) Cassation Court: wrongful disciplinary dismissals (Il Sole 24 Ore, 8 January 2015, page 45)

With its ruling no. 15 of 7 January 2015, the Cassation Court declared wrongful and thus illegal dismissal of a worker, who benefitted from employer accommodations at extremely advantageous conditions, for not having communicated that he was already the owner of other property, in order to continue to benefit from the housing made available by the employer.
Specifically, the Cassation Court recognised the charges against the worker, but considered the dismissal wrongful.
It is interesting to note that, based on the new employment contract with increased protection based on seniority currently in the process of being approved, a reintegration ruling in similar cases would not be possible (only compensation as protection), since this is only allowed if it is directly proven in court that the material fact which is the basis of the dispute, does not exist.

7) Cassation Court: limitation of the right to benefits provided by INAIL (Il Sole 24 Ore, 14 January 2015, page 37)

The Cassation Court, with ruling no. 211/2015, clarified that a suspension of the three year limitation on litigation for recognition of benefits from a occupational accident or disease is only applicable after the 150 days envisaged for the administrative payment of the benefit. The failure of INAIL to make a final ruling within the above timeframe is considered as significant silence rejecting the insured party's petition which implies completion of the administrative procedure and, with it, termination of the limitation period.

8) Cassation Court: flat rate overtime is fixed remuneration (Il Sole 24 Ore, 7 January 2015, page 33)

With its ruling no. 4 of 5 January 2015, the Cassation Court established that a flat rate compensation paid as overtime must be considered as an integral part of fixed remuneration (as individual superminimo wage supplement) if it concretely possesses the characteristics of stable remuneration recurring over time, regardless of the formal qualification assigned by the employer.

TAX DEADLINES – February 2015

- <u>This list is not comprehensive of all tax deadlines; the most recurrent administrative deadlines have been omitted</u>
- <u>From January 1st, 2014, the compensation limit has increased from Euro 516,456 to Euro 700,000.</u>

The limitations applicable to compensations shall be reminded, as follows:

- ☐ in terms of VAT (see Tax News 2010/09);
- ☐ in terms of income tax and IRAP (Regional Income Tax) (see Tax News 2014/9);
- ☐ in the presence of expired tax debts recorded in the debtors' list, for amounts exceeding Euro 1,500 (see Tax News 2009/10, 2009/12 and 2010/1).

Thursday 12th

The new rules on the letters of intent

According to the rules introduced by the so-called "Decreto Semplificazioni" (see Tax News 2014/11 and 2014/12), starting from this date, the habitual exporters shall electronically submit, to the Italian Revenue Agency, the proper notice for the VAT exemption of the services provided by their suppliers.

The receipt of the electronic submission is then sent, together with the letter of intent, to the supplier, who will then sell his goods / provide his services free of VAT only after the confirmation of the electronic sending of the letter of intent is given.

Monday 16th

TFR (i.e. End-of-service allowance): balance payment of the substitute tax on revaluation

The term for the balance payment of the substitute tax on the revaluations accrued on TFR in the previous year and to be carried out by the employers, as of articles no. 23 and 29 of the Italian Presidential Decree no. 600/73, expires on such date.
As a matter of fact, the revaluation is subject to a substitute tax amounting to 11% and is due by means of payment on account by December 16th of the year of accrual, and by means of balance payment by February 16th of the following calendar year.
The down payment is set at 90% of the revaluations accrued in the previous year, unless the so called forecasting method is applied.

Duty Code
1713, called the "balance of the substitute tax on the incomes resulting from the revaluations of TFR paid by the employer".

Saturday 28th

(Deadline extended to Monday 2nd of March)

Annual communication of VAT data

Deadline for the submission of the annual communication of VAT data related to the calendar year 2014.

- ✓ <u>It should be pointed out that from 2016 (reference: fiscal year 2015) the VAT communication is repealed, there being the obligation to submit, within the month of February, the annual VAT communication.</u>

Bound subjects
Vat holders are obliged to submit the annual communication of VAT data, even if during the year they have not carried out taxable transactions or are not obliged to make periodic payments.

It shall be reminded that the taxpayers filing the annual VAT communication by February are exempted from the related submission, also in order to *offset* the VAT credit with other taxes (on this issue, please see the Tax News 2009/10).

The following subjects are also obliged to submit the annual communication of VAT data:

- individuals who during the fiscal year the communication is referred to have realized a turnover equal or not exceeding Euro 25,000.00, even if they are obliged to submit the annual return;

- individuals who availed themselves of the regime for the " *super-minimum taxpayers* ";
- taxpayers that, for the fiscal year, have recorded only exempt transactions as of art. 10 of the VAT Decree, as well as those who, having taken advantage of the exemption from the invoicing and registration obligation as of art. 36-bis, have only carried out exempt transactions, even if they are obliged, for the same year, to submit the annual VAT return, following the carrying out of the amendments pursuant to art. 19-bis2. The exemption does not apply if the taxpayer has recorded intra-Community transactions (art. 48, paragraph 2, Italian Legislative Decree no. 331 of 1993) or purchases have been made for which, based on specific rules, the tax is due by the purchaser (for example, purchases of gold and pure silver, scrap and so on);
- taxpayers, resident in other member states of the European Community, in the case as of art. 44, paragraph 3, second sentence of the Italian Legislative Decree no. 331 of 1993, if, during the fiscal year, they have made only non-taxable, exempt, transactions, or transaction not subject to the payment of the tax;
- subjects domiciled or resident outside the European Community, not identified within the Community, who are identified for VAT purposes in the territory of the State with the modalities provided for by art. 74- *quinques* for the fulfilment of the obligations related to the services rendered by electronic means to sellers not liable to Vat and domiciled or resident in Italy or in another Member State;
- subjects undergoing bankruptcy proceedings.

Submission of the Certificazione Unica (i.e. CU form)

The deadline for the submission, by the employers, of the new "CU form", which replaces the "old CUD" as well as the certifications of payments to self-employed people, of commissions to agents, dividends, and so on.

It shall be reminded that the new CU form must be transmitted electronically, by March 7th, to the Italian Revenue Agency: employers are entitled to divide the electronic flow by sending the certifications concerning employment and similar certifications separately from the certifications concerning self-employment, commissions and miscellaneous income.

For each not sent / wrong / late transmitted CU form a sanction of Euro 100 is applied.

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