RSM STUDIO PALEA LAURI GERLA

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

TAX NEWS

2017 – 12

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(IN COLLABORATION WITH DE LUCA & PARTNERS AND HR CAPITAL IN MILAN)

FOCUS ON TAX AND ACCOUNTING TOPICS

The legal interest rate rises to 0.3%

(Italian Ministry of Economy and Finance, Decree of December 13th, 2017)

Following the publication of the above Decree, the legal rate (art. 1284 of the Italian Civil Code) has risen from the previous annual rate of 0.1% to 0.3% from January 1st ,2018.

The change has effects in the civil law field, but also in the tax area: for example, interest to be paid in the event of voluntary correction of late payments or the calculation for the valuation of usufruct (which was updated by the Italian Ministry of Economy and Finance's Decree dated December 20th, 2017).

Explanations on the new VAT deduction terms

(Italian Revenue Agency, Circular No. 1 of January 17th, 2018)

The Law Decree no. 50/2017 has reduced the deadline for the deduction of the VAT paid on purchases. From a technical point of view, the abovementioned Decree has modified the art. 19 of the Italian VAT Law, establishing that the right to deduct the VAT on purchases (or importation) of goods and services arises when the VAT is due and it can be exercised by the filing of the VAT return relating to the year in which the deduction right is arisen.
On this matter, the Italian Revenue Agency with its circular letter no.1 year 2018 has provided some clarification about the right to deduct VAT and the related deadline to exercise it: now such deadline has been established as the deadline of VAT return filing for the year when the deduction right is arisen.
The Circular letter no. 1, repeating the principles set out at European Community level about the deduction issue, underlines that the right of the VAT deduction is based on both the *substantial condition* (i.e. realization of the transaction) and the *formal condition* (i.e. possession of a valid purchase invoice).
On the basis of this assumption, the effective date for exercising the deduction must be identified when for the buyer the following double condition occurs:

1. the VAT becomes due;
2. a valid invoice is received

Therefore, only when both the abovementioned no.2 conditions are met then the buyer (after having booked the relevant invoice) may deduct the VAT paid on purchase: this right may be exercised by the date of filing of the VAT return for the year when both the above conditions are met and with reference to the same year.

From a practical point of view please find here below the examples referred to a VAT monthly taxpayer:

a) Goods purchases made on December 20th 2017 with goods and relevant invoice received in the same month and booking of the purchase invoice in 2017: the input VAT relating to such a goods purchase, will flow into the VAT settlement for the month of December 2017 (to be carried out by January 16th 2018). In fact, both the goods and the invoice have been received in December and in the same month the invoice has been posted in the VAT register.

b) invoice received the for the same purchase by December 31st 2017, but not booked in the VAT register 2017: the invoice has to be booked by April 30th 2018 (deadline for filing the 2017 VAT return) in a *specific sectional VAT register* for purchases relating to all invoices dated in 2017 and booked in 2018;

c) invoice (issued in 2017) received on January 20th 2018 in relation to the same purchase of goods: the taxpayer may deduct the input VAT paid within the VAT settlement related to January 2018 (to be carried out by February 16th, 2018), after having booked the invoice in January VAT register 2018 – basically it can be registered in one of the monthly VAT settlement until December 2018 without the usage of the specific sectional VAT register;

d) same as case "c" invoice (issued in 2017) received on January 20th 2018 in relation to the same purchase of goods if the taxpayer has not book the invoice in the 2018 VAT register: the taxpayer may deduct the input VAT through posting the document into the accounting by April 30th 2019, using a specific sectional VAT register.

The input VAT resulting from the specific sectional VAT register will flow into the balance of the annual VAT return of the prior year (i.e. 2017 for the case b and 2018 for the case d). The VAT credit can be offset only after the submission of the annual VAT return.

The regulatory changes have also entailed the need to focus on the verification of the moment when the purchase invoice is received by the buyer.
On this matter, the Tax Authorities have clarified that (with exception of objective evidence cases, such as delivery by certified email -PEC- or by other systems certifying the invoice receiving) the invoice receiving date can be assumed on a correct bookkeeping process (based first of all on a regular sequentially numbering of the invoices and customs bills received).

As regards to the deadline for credit note issuance, pursuant to art. 2 of the Italian VAT Law, due to the new wording of the art. 19, the Tax Authorities remind that such notes must be issued by the deadline of filing of the VAT return for the year when the necessary condition to carry out the decreasing variation has occurred.

Finally, it is underlined that the new regulations apply to invoices and customs bills issued from January 1st 2017.

Please find here below a summary of the VAT treatment on the basis of such a new regulation- make ref. the above-mentioned cased "a", "b", "c", "d":

PURCHASE DATE (relevant from a VAT point of view)	INVOICE RICEIVING DATE	REGISTRATION DATE **ON VAT REGISTER**	VAT SETTLEMENT	VAT RETURN **FISCAL YEAR**
2017	2017	2017	2017	2017
2017	2017	2018 – by 30th April (i.e. in the sectional VAT register 2018 relating year 2017)	NO 2018 (in 2017 with sectional VAT register)	2017 – use of sectional VAT register

2017	2018	2018 (i.e. in any of the 2018 monthly VAT settlement)	2018	2018
2017	2018	2019 – by 30th April (i.e. in the sectional VAT register 2019 relating year 2018)	NO 2019 (in 2018 with sectional VAT register)	2018 – use of sectional register

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Tax News concerning the annual Budget Law 2018

In the last few days of December the Budget plan for 2018 was launched (Law dated December 27th , 2017, no. 2015).
The provision is very significant (it is made up of over 1,000 paragraphs) and contains a lot of tax rules, the most significant of which are summarized below: first of all, the most important new rules concerning companies will be dealt with in this section, while the set of rules concerning mutual companies and the third sector will be dealt with in the future issues of our Newsletter.

<u>Extensions (and amendments) of Super and Hyper depreciation</u>

The tax reliefs known as "super" and "hyper" depreciation have been extended to 2018, with some changes.
More in details:

- the super amortization, in 2018, reduces the benefit from 40% to 30%. The benefit can also be used for investments made by June 30th, 2019, provided that by December 31st, 2018 the related order is accepted by the seller and the payments on account equal to at least 20% of the purchase cost have been made. Investments in vehicles and other means of transport are excluded from the scope of the purchase;

- hyper-amortization is maintained at 150%. Hyper-amortization is also possible for investments made, in this case, by December 31st, 2019, provided that by the date of December 31st, 2018 the related order is accepted by the seller and the payments on account equal at least to 20% of the purchasing cost have been made;

- the increase in amortization of 40% relating to <u>*intangible*</u> assets (software) used for technological transformation in accordance with the model Industria 4.0, which applies to parties who benefit from 2018 hyper amortization, is also extended.
  The scope of the assets subject to tax relief is extended and includes:
  a) supply chain management systems aimed at drop shipping in e-commerce;
  b) digital software and services for immersive, interactive and participatory use, 3D reconstructions, augmented reality;
  c) software, platforms and applications for the management and coordination of logistics with high integration characteristics of service activities (intra-factory communication, factory-field with telematics integration of on-field devices and mobile devices, telematics detection of performance and failure of on-field devices).

In order to avoid that the benefit of the hyper-amortization interferes, in subsequent years, with the investment choices of the company, it is expected that, if during the period of use of the cost increase, the realization for consideration of the asset, subject to tax relief, occurs, the residual portions of the benefit, as originally determined, will not be lost, <u>*provided that*</u>, in the <u>same</u> tax period as the realization, the company:

- replaces the original asset with a new instrumental tangible asset having *similar* or *superior* technological characteristics compared to the replaced one;

- certifies the carrying out of the replacement investment, the characteristics of the new asset and the requirement of interconnection through a declaration made by the legal representative (i. e., for assets whose purchasing cost exceeds Euro 500,000, a sworn technical report issued

by an engineer or industrial expert registered with the respective professional registers or a certificate of conformity issued by an accredited certification body).

Where the purchase cost of the replacement investment is lower than the purchase cost of the replaced asset, the benefit of the hyper-amortization continues to be used for the remaining portions up to the amount of the cost of the new investment.

Tax credit on training costs

A special tax credit is introduced for the benefit of companies that carry out expenditure on *training activities* in the tax year following that in progress as at December 31st, 2017. Such tax credit amounts to 40% of the expenses relating to (only) the business cost of employees for the period in which they are involved in training activities. The tax credit is recognized up to a maximum annual amount of Euro 300,000 for each beneficiary.

The training activities relevant to the incentive must be agreed through *collective company or territorial agreements*, but only considering the training activities carried out in order to acquire or consolidate the knowledge of the technologies provided for by the National Industry Plan 4.0, such as big data and data analysis, cloud and fog computing, cyber security, cyber-physical systems, rapid prototyping, visualization and augmented reality systems, advanced and collaborative robotics, man-machine interface, additive manufacturing, internet of things and machines and digital integration of business processes, as punctually pointed out in annex "A" to the annual budget law.

The bonus does not include the costs for *ordinary or periodic training* organized by the company to comply with the current legislation on health and safety at work, environmental protection and any other compulsory training legislation.
The tax credit:

- must be *indicated* in the income tax return for the tax year in which the expenses were *incurred* and in those relating to subsequent tax periods until their use is completed;
- does not contribute to the formation of income nor is it subject to IRAP;
- is not relevant to the deductibility ratio of interest payable;
- can be used from the tax year following the one in which costs are incurred;
- can only be used for offsetting purposes, without applying the ordinary offsetting limits.

The costs must be *certified* by the statutory auditor or a professional registered with the Register of Statutory Auditors: such certification must be" attached" to the financial statements.
Companies which are not subject to a statutory audit shall in any case ask for the support of a statutory auditor or audit firm: in this case the expenses incurred for the audit activity are eligible up to a maximum of € 5,000.

IRAP deduction for seasonal workers

For the year 2018, for IRAP subjects (excluding non-profit bodies and public administrations), the cost incurred for those seasonal workers employed for at least 120 days for 2 tax periods can be fully deducted, starting from the second agreement entered into with the same employer over a period of 2 years starting from the date of termination of the previous agreement.

Electronic invoicing

From January 1st, 2019, the *generalized* obligation of e-invoicing is introduced (only those subject to flat-rate regimes are excluded).

More in details, from such date onwards, for sales of goods and services made between residents established or identified in the territory of the Italian State and for the related variations, only electronic invoices shall be issued using the so-called "interchange system".
The electronic invoices issued to *final consumers* will be made available to them by the telematic services of the Italian Tax Authorities: a copy of the invoice will be made available directly by those who issue the invoice.

With reference to the transactions carried out with *subjects not resident in Italy* (except in cases where an electronic invoice or customs bill has been issued/received), the VAT taxpayers will send the relevant data electronically to the Italian Tax Authorities.

Failure to issue electronic invoices corresponds to non-invoicing , leading to the imposition of penalties (one of which may range from 90% to 180% of VAT on the wrongly documented taxable amount).

At the same time as the introduction of e-invoicing, the Italian Register of income and expenses (i.e. Spesometro) is abolished.

The obligation to issue electronic invoices is brought forward to July 1st, 2018 as regards the supply of petrol or diesel used as motor fuel (if the counter party is a VAT taxpayer); at the same time, the *fuel card* is also abolished.
Such date will also be effective for the services of subcontractors of the supply chain of companies with reference to tender agreement for works, services or supplies entered into with the Italian Public Administration.

VAT group

The rules on the VAT group, introduced in 2017 (art. 1, paragraph 24, Law no. 232/2016), is already subject to changes applicable to transactions carried out from January 1st, 2018.
More specifically, the new paragraphs from 4-bis to 4-sexies under art. 70-quinquies of the VAT Decree concerning intra-group transactions are introduced:

- it is provided that transactions carried out by a registered office or permanent establishment belonging to the VAT group towards one of its permanent establishments or one of its foreign subsidiaries shall be deemed as they have been carried out by the VAT group towards a subject who is not a member of that group; at the same time, transactions carried out with regard to a registered office or permanent establishment belonging to a VAT group by one of its foreign subsidiaries or permanent establishments shall be deemed as they have been carried out towards the VAT group by a subject who is not a member of that group;
- transactions carried out towards a registered office or permanent establishment belonging to a VAT group set up in another EU Member State by one of its permanent establishments or by its registered office set up in Italy shall be deemed as they have been carried out towards the VAT group set up in the other Member State by a subject who is not a member of that group. Transactions carried out by a registered office or permanent establishment belonging to a VAT group set up in another E.U. Member State towards a permanent establishment or its registered office in Italy shall be deemed as they have been carried out by the VAT Group set up in the other E.U. Member State towards a subject who is not a member of that group;
- the taxable amount of said transactions, if there is a consideration, is determined in accordance with the general rules (article 13 of the Italian Presidential Decree no. 633/1972). If the services are performed without consideration, the provisions on transactions (sales of goods and services) carried out without consideration shall apply.

Interest payable- changes to the calculation of the gross operating income (GOP)

From the tax year2018, the amount of dividends received from foreign subsidiaries is excluded from the calculation of the gross operating profit for the purpose of determining the amount of deductible interest payable (art. 96 TUIR – i.e. Italian consolidated law on income tax).

Realignment of transactions book values with regard to foreign subsidiaries

The scope of the tax relief for the greater values of controlling equity investments, booked in the financial statements following extraordinary transactions and other acquisition transactions and relating to goodwill, trademarks and other assets, is also *extended* to transactions involving foreign investee companies or referred to controlling *stakes in resident and non-resident companies*, *even if they do not have a permanent establishment in Italy*.
This extension applies to purchases completed from the tax period 2017, within the limits of the misalignments still existing at the end of said period.

A future measure by the Director of the Italian Revenue Agency will implement the discipline.

Changes to the regulations on the Permanent Establishment

Article 162 of the TUIR relating to the Permanent Establishment is significantly amended.

In particular, it is provided that a permanent establishment exists if there is a significant and continuous economic presence in the territory of the Italian State, set up in such a way that it is not physically present in that territory.

Moreover, the current letter (f) of art. 162 TUIR, is *replaced :* the concept of a permanent establishment includes "any other place related to the research and exploitation of resources of any kind" (formerly referred to as "another place of extraction of natural resources").

It is also provided (new paragraph 4) that the concept of "permanent establishment" does not include:

(a) the use of an installation for the sole purpose of storing, displaying or delivering commodities or goods belonging to the company;
(b) the availability of commodities or goods belonging to the company and stored for the only purpose of storage, display or delivery;
(c) the availability of commodities or goods belonging to the company and stored only for processing activity to be carried out by another company;
(d) the availability of a fixed place of business used only for the purpose of purchasing goods or commodities or collecting information for the enterprise;
(e) the availability of a fixed place of business used only for the purpose of carrying out - on behalf of the business - any other activity;
(f) the availability of a fixed place of business used only for the purposes of the combined performing of the activities referred to under letters from (a) to (e).
The above exemptions shall apply on condition that the business activities as per points from (a) to (d) or, in the cases referred to under point (e), the entire business activity of the fixed place of business, bear a *preparatory or ancillary* nature.

The exemptions, on the other hand, shall not apply to a fixed place of business used or managed by an enterprise if the same enterprise, or an enterprise closely related to it, carries out its business activity

in the same place or elsewhere in the territory of the Italian State and the same place or other place represents a permanent establishment for the enterprise or for the enterprise closely related to it according to this article or the entire activity – resulting from the combination of the activities carried out by the two enterprises within the same place or by the same enterprise or by enterprises closely related to each other in the two places – does not bear a preparatory or ancillary nature, provided that the activities carried out by the two enterprises in the same place, or by the same enterprise, or by the closely related enterprises in the two places, represent complementary functions being part of a unitary whole of business operations.

It is also provided (new paragraph 6) that if a subject acts in the territory of the Italian State on behalf of a non-resident company and habitually enters into agreements or acts for the purpose of concluding agreements without substantial changes by the company and such agreements are in the name of the company or relate to the transfer of ownership , or relate to the granting of the right to use, the assets of such company or that the company has the right to use, or relate to the provision of services by such company, it is considered that such company has a permanent establishment within the territory of the Italian State in relation to any activity carried out by said subject on behalf of the company, unless the activities of such subject are limited to the performance of the activities as per the abovementioned new paragraph 4 which – if carried out through a fixed place of business – would not make it possible to consider such fixed place of business as a permanent establishment according to the provisions of paragraph 4.

The provisions of the new paragraph 6 do not apply when the subject, who operates in the territory of the Italian State on behalf of a non-resident company, carries out its activity as an independent agent and acts for the company as part of its ordinary activity. However, when a subject operates exclusively or almost exclusively on behalf of one or more companies to which it is closely related, such subject shall not be regarded as an independent agent in relation to each of those companies.

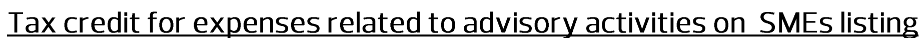
A subject is defined as *closely related* to an enterprise if, taking into account all relevant facts and circumstances, one has control of the other or both are controlled by the same subject. In any case, a subject is considered to be closely related to an enterprise if one directly or indirectly owns more than 50% of the other's shareholding or in case of a company if one directly or indirectly owns more than 50% of the total voting rights and of the share capital, or if both of them are investees of another subject, directly or indirectly, for an amount exceeding 50% of the stake, or, in case of a company for an amount exceeding 50% of the total voting rights and of the share capital.

Suspension of proxies for payment

It is provided that the Italian Tax Authorities may *suspend*, up to 30 days, the execution of proxies for the payment of taxes (F24) made by means of offsetting with *risk profiles*, in order to check the use of credit.

If, once checked, the credit is correctly used, i.e. after 30 days from the date of submission of the payment proxy, this latter is executed and the offsetting and payments contained therein are considered as carried out on the same date of their execution; otherwise, the payment proxy is not executed and the payments and offsetting are considered as not carried out.

A specific Decree will regulate the provision.



Tax credit for expenses related to advisory activities on SMEs listing

A tax credit is introduced for SMEs in relation to the advisory services costs in order to allow them to be listed on regulated markets or MTFs in Europe.
The credit, granted in the amount of 50% of the costs incurred up to December 31st, 2020 (maximum amount of the benefit: €500,000) can be exclusively *offset* starting from the tax period following the one in which the listing was obtained and it must be indicated in the tax return for the tax period in which the credit was accrued and in the tax returns related to the subsequent tax periods up to the one in which the use ends.

The bonus does not contribute to the formation of income for income tax or IRAP purposes, is not relevant for the interest deductibility and is subject to EU rules on aid to enterprises. A special decree will implement the provision.

Sport bonus

For the year 2018, for the benefit of all companies, a specific contribution is set up for donations in cash made for the restoration activities or restructuring of public sports facilities, even if they are intended for buyers.
The benefit, granted in the form of a tax credit that can only be offset (in 3 annual instalments of the same amount) is limited to 3 per thousand of the annual revenues, and is proportionate to 50% of the expenditure incurred, up to Euro 40,000.

Specific obligations shall be fulfilled by the beneficiary of the donations.

"Renzi bonus"

The income thresholds for benefitting from the "bonus of €80" are slightly raised, widening the target group: the previous threshold amounted to €24,000, now the bonus is granted if the total income does not exceed €24,600.
Similarly, the bonus decreases, until it is cancelled, in the presence of a total income equal to or exceeding Euro 26,600 compared to the previous Euro 26,000.

Income limit for dependent children

Starting from 2019, for children aged no more than 24 years the total income limit for dependent subjects will be raised from the current €2,840.51 to €4,000.

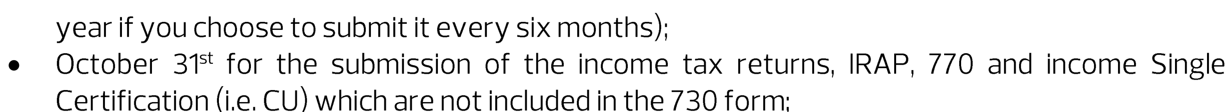
Extension of the entry into force of ISA

The entry into force of "ISA" (i.e. **Synthetic Reliability Indexes** [SRIs]) will be postponed to tax year 2018.

Tax calendar for 2018

The calendar of the main obligations relating to the submission of income tax returns is amended.
More in details, the following deadlines are set for 2018:

- July 23rd for submitting the 730 form;
- September 30th for submitting Spesometro related to the second quarter (or first half of the



year if you choose to submit it every six months);
- October 31st for the submission of the income tax returns, IRAP, 770 and income Single Certification (i.e. CU) which are not included in the 730 form;

Sanction for breaching VAT return obligations

A specific administrative sanction is introduced, ranging between Euro 250 and Euro 10,000, for the buyer in case an amount of tax being higher than the actual one is applied, wrongly paid by the seller, without prejudice to the right of the buyer to deduction.

The refund of the tax is excluded if the payment was made within a tax fraud.

Real Estate Brokerage Firms taxation

Real Estate Brokerage Firms (i.e. SIM) are excluded from the application of 3.5% of IRES (i.e. corporate income tax), introduced for Credit and Financial Institutions by the Stability Law 2016: at the same time, the deductibility of interest payable, for IRES purposes, has been brought to 96% of the related amount. Interest payable is deductible to the same extent, also for IRAP purposes.
These amendments shall apply already from the tax year2017.

Public administration payments

From March 1st, 2018, the threshold - above which public administrations and companies with a majority of public shareholding must, before making payments, also check electronically whether the beneficiary has breached the payment obligation resulting from one or more notices of payment for a total amount equal to at least such amount- is reduced from Euro 10,000.00 to Euro 5,000.00 .

Increased taxation of financial income on qualified equity investments

The taxation of dividends and capital gains between "qualifying" and non- qualifying shareholdings is standardized, with the only substitute rate of 26% being applied: the amendment therefore concerns the taxation of qualifying shareholdings, now aligned (upwards) with the taxation of non- qualifying shareholdings.

The amendment is applied with reference to dividends on profits *accrued* from January 1st, 2018 and capital gains realized from January 1st, 2019. A transitional regime until 2022 is provided to coordinate the old provisions with the new ones.

Taxation of profits from investments in companies resident in Black-Listed Countries

For the purposes of dividends taxation, the profits *received* from the tax period following December 31st ,2014 and *accrued* in previous tax periods, in which the investee companies were resident or located in countries or territories not included in the black list of controlled foreign companies (CFCs), are not considered as profits resulting from companies resident or located in countries or territories benefitting from a "favorable tax treatment" (and therefore they do not wholly contribute to the formation of taxable income).

Profits accrued after 2014 in States or territories not benefitting from a favorable tax regime and subsequently received in tax periods in which the conditions laid down in article 167, paragraph 4 of TUIR are met (based on which the tax regimes, including special tax regimes, of States or territories are considered as privileged where the nominal level of taxation is lower than 50% of the one applied in Italy)

are not considered as resulting from companies resident or located in States or territories benefitting from a favorable tax regime.

It is also provided that profits from companies resident in States or territories benefitting from a favorable tax treatment and the remunerations deriving from co-sharing agreements, entered into with such subjects, do not contribute to forming the income of the tax year in which they are received, since they are excluded from the income of the company or of the receiving body for 50% of their amount, provided that it is proved that, also following a ruling, the non-resident subject actually performs a commercial or industrial business activity, as its main activity, in the market of the state or territory in which it is established; in this case, a tax credit is granted to the controlling subject resident in the territory of the State or to its resident subsidiaries receiving the profits. Such tax credit relates to the income produced abroad on the basis of the taxes paid by the investee company on the profits accrued during the period of ownership of the shareholding, in proportion to the taxable share of the profits achieved and within the limits of the Italian tax relating to such profits.

Web Tax

A tax on digital transactions is introduced. It relates to the supply of services made by *electronic means* and rendered to subjects resident in the territory of the State as well as to permanent establishments of subjects not resident in the same territory.
Services provided by Internet or by an electronic network and whose nature makes the provision *essentially automated*, accompanied by minimal human intervention being impossible to guarantee in the absence of information technology fall within the scope of the provision.

The tax is applied at the rate of 3% on the amount due for services, net of value added tax, *irrespective* of the place where the transaction is concluded.
The tax is applied on the supplier, resident or non-resident, who during a calendar year carries out a total number of transactions exceeding 3,000 transactions.

The Web Tax is applied, when the related amount is paid, by the parties asking for the services, with the recourse obligation towards the supplies, unless the parties providing the services indicate that they have not exceeded the above limits of transactions in the invoice relating to the supply, or in another suitable document to be sent together with the invoice, possibly identified with a specific measure. The same buyers shall pay the tax by the 16th day of the month following the one in which the payment of the amount is performed.
The subjects providing the above services are entitled to a tax credit equal to the amount of the tax that can be used for the purposes of income tax payments; any excess can only be offset.

The new tax is not immediately applicable since it will enter into force from January 1st of the year following the one in which the decree identifying the services concerned are published in the Official Gazette.

IRI deferral

The introduction of the rules on IRI (i.e. corporate income tax) – to be calculated on profits withheld from the company – for sole proprietors and general partnerships and limited partnership under ordinary accounting regime, provided for by the annual Budget Law 2017, is deferred to January 1st, 2018.

Energy saving bonus

The 65% deduction on the costs of energy saving activities is extended to December 31st, 2018: at the same time, the deduction is reduced to 50% with reference to:

- the expenses, incurred since January 1st ,2018, related to the purchase and installation of windows including window frames, solar shielding and replacement of winter air conditioning systems with systems equipped with condensing boilers with an efficiency at least equal to energy class A. In any case, it is not easy to replacement of winter air conditioning systems with systems equipped with condensing boilers with an efficiency lower than energy class A are not in any case subject to deduction;

- the purchase and installation of winter air conditioning systems with systems equipped with heat generators powered by biomass fuels (up to a maximum of Euro 30,000).

The deduction shall also apply at the rate of 65% to expenses for the purchase and installation of micro-co-generators to replace existing plants, incurred from January 1st, 2018 to December 31st, 2018, up to a maximum value of the deduction of Euro 100,000. In order to benefit from the above deduction, the activities in question must lead to energy savings as identified in the provisions.

The possibility of transferring the deduction, now applicable to all taxpayers and for all types of expenditure, is also extended.
Finally, there are also changes to the deduction for anti-seismic measures, both with reference to the benefit and to the cases included.

Restructuring bonuses

50% deduction on the costs incurred for building renovation works is also extended to December 31st, 2018.

Flat rate

The application of the 10% reduced rate in case of agreements with an agreed fee is confirmed up to 2019.

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DEADLINES – JANUARY 2018

- <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>
  Please remind the following limitations applicable to compensations:

  - ☐ in terms of VAT
  - ☐ in terms of taxes on income and IRAP
  - ☐ in the presence of tax debts entered on the tax roll and expired for amounts exceeding Euro 1,500

Monday 15th

Employees' tax assistance – communication to employees

The above date represents the deadline by which employers who provide income from employment and similar income shall inform their employees of their willingness to provide them with tax assistance for the tax return for the 2017 tax year.

Wednesday 31st

Stamp duty – virtual payment

The taxpayers authorized to pay stamp duty in a virtual manner must submit to the Tax Authorities a special declaration containing the number of deeds and documents issued during 2017, broken down by tariff item: on the basis of this declaration, the Tax Authorities adjust the amount due.

<u>Since 2015, the declaration has been made exclusively through an electronic channel.</u>

Inventory book 2016 – drafting and undersigning

Pursuant to art. 2217 of the Italian Civil Code and art. 15 of the Italian Presidential Decree no. 600/1973, the inventory book must be drawn up and signed by the legal representative within 3 months from the deadline for submitting the tax return.

The above term, therefore, refers to subjects whose tax year coincides with the calendar year.

Printing of 2016 accounting records kept with mechanographic modalities

The above term also refers to deadline for the <u>paper printing</u> of the accounting records kept mechanographically, being effective for those subjects whose tax year coincides with the calendar year.

FOCUS ON EMPLOYMENT

(IN COLLABORATION WITH DE LUCA & PARTNERS AND HR CAPITAL IN MILAN)

DID YOU KNOW THAT…

the part-time working hours can be changed with the provision of flexible clauses?

The parties may include in the part-time employment agreement, according to article 6 of Legislative Decree 81/2015, flexible clauses related to (i) the change in the scheduled arrangement of the service or (ii) the increase in its duration. The worker is entitled to two business-day notice, unless otherwise agreed by the parties. If the flexible clauses are not included in collective agreements, they may be agreed by the parties before the certification committees. The changes in working time entitle the worker's right to a 15% increase in the total actual wage, including the effect of the remuneration on indirect and deferred retributive institutions. Part-time employment agreement, flexible clauses, two-business-day notice, 15% increase in the total actual wage.

JUDGEMENT OF THE MONTH

Contributions due to the transaction if connected to the employment relationship

The Court of Cassation, with judgement No. 27933 dated 23 November 2017, returned to issue its ruling on the issue concerning the taxation applicability of the amounts paid by the employer as part of a settlement agreement signed with the employee within the employment relationship. In particular, according to the Court of Cassation, in order to assess whether the transaction occurred between the parties is extraneous to the social security relationship, it is necessary to check that (i) there is no specific connection of payment and (ii) there is a title independent and different from the employment relationship that justifies its payment. The present case concerned the right of three former employees of a banking company to have their contributions credited by Inps in relation to the amounts received during conciliation following the outcome of a previous dispute. The Court of Appeal of Rome set aside the judgement at first instance, ruling in favour of the appeal of INPS, and confirmed that these amounts were not subjected to taxation because they were not connected to a remuneration function pursuant to article 12 of Law 153/1969 as amended by article 6 of Legislative Decree No. 314/1997. The Court of Cassation, which was called to decide upon this issue, aligned its decision with the consolidated orientation according to which, in the case of social security obligations, if a judicial settlement took place that can be ascribable to the employment relationship shown below, the settlement agreement signed by the parties has novative effect, constituting the sole and original source of the rights and obligations subsequent to the termination of the relationship. Therefore, in the Court opinion, it is essential to understand when the amounts paid as a settlement are directly connected to the employment relationship, and when they arise directly from the settlement agreement.

REGULATIONS

Budget law 2018: new developments on labour and social security

The Budget Law 2018 was published in the Official Gazette No. 302 dated 29 December 2017, which was approved by the Senate last 23 December and on which the Government placed its trust. The main news in the field of employment and social security include: (i) a 50% social security contribution

allowance for a maximum period of 36 months and up to an annual maximum limit of Euro 3,000 in the event of hiring, starting from 01 January 2018, with increasing protections on an open-ended contract for young people under 35 years old (under 30 years effective from 2019). The social security contribution allowance may also reach 100% if the hiring concerns a young person who has already completed an apprenticeship or carried out work-school activity at the company; (ii) the exemption from social security contributions for 18 or 12 months in the event of hiring, respectively with an open-ended or fixed-term agreement of workers who previously received relocation allowance; (iii) the increase in the dismissal contribution paid as part of a collective procedure rising from 41% (equal to Euro 1,740) to 82% (equal to Euro 2,940) of the ceiling required by NASPI for each worker. Collective dismissals are exceptions when resulting from procedures initiated no later than October 2017; (iv) the extension, for the years 2018 and 2019, of the period of Extraordinary Wages Guarantee Fund, up to the maximum limit of 12 months, for companies with more than 100 employees and of strategic economic importance also at the regional level having major occupational issues with significant excess in personnel within the territory and (v) the expansion of workers' pool who may access the social APE and voluntary APE (Italian early retirement pension).

As of 1 January 2018, the new requirements will be in force on mandatory hiring

In 2018, employers meeting specific prerequisites will have to meet the requirements of the new laws on mandatory hiring. The provisions of Legislative Decree No. 151/2015 come into force on 1 January 2018 - the effective date of which was originally planned for 2017 and subsequently postponed until 2018 due to the effect of the "Mille proroghe" Decree dated 2017 - which establishes the termination of the gradualness regime referred to in article 3, paragraph 2 of Law No. 68/1999 and of the transitional regime established in Article 2, paragraph 2 of Presidential Decree 333/2000, which required the mandatory hiring, respectively, at the time of the sixteenth hiring and after one year and 60 days from the latter. Under the new regime, however, all employers that, on 1 January 2018, have more than 14 employees, shall do so by 1 March 2018 or, in any case, within 60 days after reaching that threshold. However, alternative solutions for companies are not lacking. In any case, they may request partial exemption from the hiring by paying the daily contribution of Euro 30.62 for each missed hiring or sign special agreements with the competent offices to fulfil their obligations. From a financial standpoint, however, employers may benefit from the 36/60-month incentive referred to in article 13 of Law No 68/1999.

CASE LAW

Dismissal justified by objective reasons: redistribution of tasks and increase in profits

The Court of Cassation, with its judgement No. 29238 dated 6 December 2017, ruled once again on the legitimacy of dismissal due to removal of the job position occurred as a result of a reorganisation aimed at increasing the efficiency and profitability of the company. First of all, the Court of Cassation upheld in its entirety the judgement issued by the court of appeals contested by the dismissed worker, giving continuity to its policy according to which a justified objective reason can occur even just with the different distribution of certain tasks among the staff in service, if implemented "with the purpose of a more efficient company management". In other words, according to the Court, certain tasks can be redistributed among more than one worker, with "the final result of showing the redundancy of the job position of that employee assigned exclusively to that position". Moreover, in the Court opinion, dismissal for justified objective reasons must not necessarily be due to a company crisis. Indeed, "in order to legitimise individual dismissal for justified objective reasons, the negative economic trend of the company does not constitute a factual requirement that the employer must necessarily prove, it being sufficient that the reasons concerning the productive activity and organization of work, including

those aimed at a better management efficiency or an increase in profitability, determine a real change in the organizational structure through the removal of a given job position".

Dismissal of an employee who carries out other activities while on leave referred to in Law no. 104 is lawful

The Court of Cassation, with its judgement No. 29613 dated 11 December 2017, declared lawful the dismissal for just cause ordered to an employee who carried out another activity during his absence from work, in addition to an injury, to assist a family member with disability pursuant to article 33 of Law 104/1992. In particular, the Court of Cassation deemed valid the decision with which the competent local Court of Appeals confirmed the judgement of the Court of first instance and rejected the employee's appeal against the dismissing measure. According to the Court of Cassation, first of all, the fact charged against the employee was adequately detailed and properly met the requirements for providing adequate defence, since the days on which the work activity would have been carried out, were indicated. Regarding the seriousness of the complaint which led to the dismissal, the Court pointed out that the fraudulent conduct committed by the employee was such as to irremediably damage the relationship of trust established as a basis for the employment relationship, especially in consideration of the "... reason for the leave for disability dishonoured by the obvious lack of interest shown toward the family member under denied assistance".

No training and administrative liability of the organization

With its judgement No. 53285 dated 23 November 2017, the Court of Cassation confirmed some fundamental principles regarding administrative liability pursuant to Legislative Decree 231/2001 and safety in the workplace. In particular, according to the Court of Cassation, the pre-requisites for the administrative liability for advantages or in the interest of the entity (i) must refer to the conduct and not to the event and (ii) be alternative and concurring with each other, "as the criterion of interest expresses an assessment of the teleological crime, appreciable ex ante, that is at the time of the occurring of the fact, according to a subjective opinion while the advantage criterion has a mainly objective connotation, which can be assessed ex post, on the basis of the effects derived from the occurring of the offence" . Finally, in the judgement, it is reaffirmed, on the basis of a previous orientation, that it does not matter how small the advantage or interest is for they do not represent exemption from the liability of the entity. In view of the above, the Court, in the case submitted for its review, linked the employer's administrative liability to the unsuitability of the DVR (Risk Assessment Document) adopted and to the inadequacy of the training and information activities provided to the employee who was the victim of serious personal injuries, whereas with reference to the advantage/interest of the entity it highlighted "the incidence of the company's unfair practice ascertained on the expenses/profit ratio".

Dismissal for just cause of an employee who copies company data even if they are not password-protected is lawful

The Court of Cassation, in its judgement No. 25147 dated 24 October 2017, deemed lawful the dismissal for just cause ordered to an employee who downloaded company data (not password-protected) on a personal pen driver, without disclosing them to third parties. According to the Court, indeed the fact that the employee had not disclosed the data unlawfully stolen from the company servers, but only saved them on a pen drive, was not sufficient to determine the unlawfulness of the dismissing measure issued without notice on the basis of National Collective Bargaining Agreement (CCNL) of the sector. This, because that conduct still constituted a violation of the obligations of due diligence and loyalty referred to in Article 2105 of the Civil Code. The Court of Cassation, in the course of the argument as a

basis of the decision, also pointed out that even the failure to protect company data with passwords would have not affected the lawfulness of the employer dismissal. This because the nature of the data, which was obviously confidential, remains such even if access to employees is free nor this can in any way legitimize the conduct of the employee. Basically, the employee must not perform activities contrary to the interests of the employer, meaning those that, although not currently causing damage, have the potential to do harm.

PRACTICE

Clarifications from the Data Protection Authority on the Protection of Personal Data

The Data Protection Authority, on 15 December 2017, published on its official website a series of clarifications regarding the appointment and duties of the Data Protection Officer ("DPO"). More specifically, the Data Protection Officer must have specific skills, preferably, whenever appointed internally, be a Manager or a high ranking professional to be appointed with a specific deed. The Data Protection Authority, in addition, clarifies that this task cannot be carried out neither by the corporate IT System's Manager nor any other professional figure with conflict of interest. In addition, the Data Protection Authority points out that even though there are no diplomas or degrees suitable to train the Data Protection Officer, even if he/she must have specific legal knowledge, now there are a variety of courses that offer specific training on the matter and the Data Protection Authority recommends attending them. In fact, it is reminded that the appointment of a non-competent person or a person not suitable to carry out the role of Data Protection Officer could lead to fines for the Data Controller, among which the payment of administrative fines. Finally, it is specified that the role could be held also by a legal entity, as long as there is an individual within the company that acts as a reference.

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