RSM STUDIO PALEA LAURI GERLA

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

TAX NEWS

2018 – 11/12

End-year Tax Provisions

RSM

During the month of December, two measures were approved containing extremely significant tax changes.

More specifically, these concern the "Tax Decree" (Decree Law no. 119/2018, converted into Law no. 136 of December 17th, 2018) and the Budget Law for 2019 (Law no. 145, approved on December 30th, 2018).

Below is an initial summary of the most significant tax measures that in the coming months might be subject to further in-depth analysis, also in the light of explanations provided by the Italian Tax Authorities.

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Tax Decree

Changes to electronic invoicing and VAT provisions

Before coming into force, the electronic invoicing has been subject to changes, both by the tax decree and by the Italian Finance Act. In some cases, the changes introduced have a direct impact on the tax regulation.

The adjustments provided for by Decree Law no. 119 are, in particular, the following:

- as from July 1st, 2019, *invoices may be issued* within 10 days from the carrying out of the transactions: therefore, the electronic invoice is considered to have been issued if it is sent through the Interchange System within 10 days from the carrying out of the transaction. It shall be pointed out that the rule does not affect the tax point regulation and the consequent settlement; as a result of this change, among the indications that must be contained in the invoice there is the date on which the sale of goods or services has been carried out or the date on which the consideration has been paid in whole or in part, provided that this date is different from the date of issue of the invoice.

- The *deadlines for registering invoices* issued are changed: all invoices issued must be registered with a special register by the 15th day of the month following the one in which the transactions have been carried out. For sales of goods made by the buyer to a third party through its seller, the invoice must be registered by the 15th day of the month following the month of issue.

- The obligation of *progressive numbering* of invoices in the registration of purchases is repealed. This requirement is automatically met for electronic invoices sent through the Exchange System.

- With regard to the VAT deduction, and with reference to the monthly settlements, it is possible to deduct – in the month the transaction is carried out– the tax related to the purchase documents *received and registered* within the 15th of the month following the one in which the transaction is carried out.

- for the first half of 2019, no *sanctions* will be applied for the violation of the obligations relating to documentation, registration and identification of transactions subject to VAT, if the electronic invoice is not issued at the same time, i.e. within 24 hours from the sale of the goods or services,

but in any case, within the period for periodic payment of the value added tax. Sanctions can, instead, be challenged but reduced to 20%, when the invoice, issued late, participates in the periodic payment of the following month or quarter. For taxpayers who pay their VAT periodically on a monthly basis, the reduction to 20% applies until September 30th 2019.

- Exemption from the obligation of *active* electronic invoicing of subjects required to send data to the Health Insurance Card System for the purposes of processing the pre-filled tax return:

  - subjects enrolled in the Register of Surgeons and Dentists,
  - local health authorities,
  - hospital companies,
  - scientific institutions of hospitalization and care,
  - university polyclinics,
  - public and private pharmacies,
  - outpatient specialist facilities, facilities for the provision of prosthetic and supplementary assistance, other facilities and accredited structures for the provision of health services.

Extension of the VAT reverse charge for certain transactions

Article 2, paragraph 2-bis of the decree provides for the extension - until June 30th, 2022 - of the provisions on reverse charge currently in force and referring to *specific cases* (listed under Article 17, paragraph 6, of the Italian Presidential Decree 633/72). The extension concerns, among other things, the following transactions:

- sales of terminal equipment for the public land radio service of communications subject to the tax on government concessions;
- sales of gaming consoles, tablet PCs and laptops.

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Budget Law 2019

New flat-rate regime for low-income earners registered for VAT purposes

Taxpayers who are individuals carrying out business, craft or professional activities may access the flat-rate regime introduced by the 2015 Stability Law on condition that they have earned income or received considerations not exceeding Euro 65,000 in the previous year.
Among the reasons for this, the following are worthy of note:

IMPEDIMENTS

Flat-rate taxpayers pay a substitute tax of 15% (reduced to 5% for the first 5 years of activity, if certain conditions are met), calculated on the revenues earned net of a percentage of "flat-rate" costs according to the economic sector in which the activity is carried out; flat-rate taxpayers are also *exempt* from electronic invoicing.

Among the different *reasons for exclusion* from the regime is that they cannot opt for it:

- those who participate simultaneously in the carrying out of the activity, in partnerships, in associations or family businesses as per art. 5 of the TUIR (i.e. Italian Income Tax Consolidation Act), or who directly or indirectly *control* S.r.l. or associations in participation, which carry out *economic activities directly or indirectly attributable to those carried out by business, craft or professional activities*;

- natural persons whose activity is carried out mainly with regard to employers with whom work relations are in progress or work relations had taken place in the previous 2 tax periods, or with regard to persons directly or indirectly related to such employers.

At the same time, it is provided that, from January 1st, 2020, natural persons carrying out business, craft or professional activities who, in the tax period prior to the one for which the return is submitted, have achieved revenues or received considerations between Euro 65,001 and Euro 100,000, may apply a substitute tax of IRPEF (i.e. Personal income tax), of the regional and municipal surcharges and of IRAP (i.e. Regional Income Tax) at a rate of 20% to the business or self-employment income.

Deductibility of IMU for operating properties

The percentage of deductibility from income taxes of the IMU (i.e. Municipal Property Taxes) due on operating properties is raised to 40% (from the previous 20%).

Persons subject to IRPEF – loss carried-forward

The rules governing the carrying forward of losses by IRPEF (i.e. *personal income tax)* entities, regardless of the accounting regime adopted, introduce the limit for their use based on the income generated in subsequent years (40% or 60%).

Facilitated taxation of reinvested profits

From 2019, companies that increase employment levels (employees on fixed-term or permanent contracts) and that invest in new operating tangible assets may, under certain conditions, apply a reduced IRES rate of 9 percentage points.

Digital services tax ("new Web Tax")

The "tax on digital services" is subject to a rate of 3%.

The tax is applied to revenues deriving from the supply of the following services:

- advertising on a digital interface targeted at users of the same interface;

- provision of a multilateral digital interface that allows users to be in contact and interact with each other, also in order to facilitate the direct supply of goods or services;

- transmission of data collected from users and generated by the use of a digital interface.

At the same time, the "old" Web Tax, introduced by the 2018 Budget Law and never entered into force, is repealed.

Flat rate tax on commercial properties

For lease contracts, entered into in 2019 by individuals, relating to commercial premises, falling within the cadastral category C/1 (up to 600 square meters of surface area, excluding appurtenances), it is possible to opt for the application of the flat rate tax at a rate of 21%.

This regime is not applicable to agreements entered into in 2019, if on October 15th, 2018 there is an unexpired agreement between the same parties and for the same property, interrupted earlier than the natural expiry date.

Hyper-depreciation

The *hyper-depreciation* is extended also for 2019.

The increase in the acquisition cost of the investments applies in the amount of:

- 170% for investments up to €2.5 million;
- 100% for investments over Euro 2.5 million and up to Euro 10 million;
- 50% for investments of more than €10 million and up to €20 million.

The cost increase does not apply to the part of the total investment exceeding the EUR 20 million limit.

Exclusion of operating properties

The regulation of the facilitated exclusion of operating properties is proposed again and is thus extended to the exclusions from the company's assets:

- of the assets held as at October 31st, 2018,
- carried out from January 1st to May 31st, 2019.

The instalments of the substitute tax (8%) must be paid by November 30th, 2019 and June 16th, 2020, respectively.

Extension of deductions for building renovation, energy saving and purchase of furniture and appliances - green bonus

For 2019, the tax deductions relating to the expenses incurred for the following activities are confirmed:

- building recovery (50% deduction);
- energy requalification (deductions from 50% to 85% depending on the type of work carried out);
- purchase of furniture and large household appliances (50%).

The "green bonus" (Irpef deduction of 36%, up to a maximum of Euro 5,000, works realized for private green areas) is also extended to 2019.

Research and development tax credit

From 2019, the tax credit for investments in research and development activities will generally increase from 50% to 25%.
The maximum amount that can be granted annually to each company is reduced to Euro 10 million (previously 20 million).

It is also provided that the beneficiary companies are required to draw up and keep a *technical report* showing the aims, contents and results of the research and development activities carried out in each tax period in relation to the projects or sub-projects being carried out.

Extension of the tax credit for "4.0 training"

The tax credit rules for the costs of training employees in the technology sector provided for in the National "Industry 4.0" Plan (as per article 1, paragraphs 46-55 of Law no. 205 of December 27th, 2017) also apply to training costs incurred in the tax period following the one in progress as at December 31st, 2018.

Facilitated settlement of debts of taxpayers in economic difficulty

Natural persons who are in "a serious and proven situation of economic difficulty" (as indicated by an Isee (i.e. Italian equivalent financial situation index) of the family unit not exceeding Euro 20,000) can settle their tax debts, other than those subject to the write-off up to Euro 1,000 provided for by the Decree Law 119/2018, entrusted to the collection agent from January 1st, 2000 to December 31st, 2017 and deriving from the non-payment of taxes resulting from annual returns and from the activities of automatic control of the returns themselves, as well as from the failure to pay social security contributions.

The amnesty provides for the payment (also by instalments) of the capital, of the interest (the latter due in a differentiated amount depending on the Isee) and of the sums due to the collection agent by way of premium and reimbursement of the costs for the enforcement procedures and serving of the collection notice. Penalties and interest for late payment are not due.

Investments in innovative start-ups

For 2019, the rates of deductions provided for in favour of those who invest in the share capital of an "innovative start-up" increase (from 30%) to 40%.

In the case of acquisition of the entire share capital of innovative start-ups by IRES entities, the same rates increase, for 2019, from 30% to 50%, provided that the entire share capital is acquired and maintained for at least 3 years.

Tax credit on advertising investments

It is clarified that the "Advertising bonus" (pursuant to article 57-bis of the Decree-Law no. 50/2017) is granted in accordance with and within the limits of the European rules on *de minimis* aid.

Revaluation of company shares

Companies which do not adopt international accounting standards may revalue assets and participations, with the exception of real estate for the production or exchange of which the activity is directed, as shown in the financial statements for the current financial year as at December 31st, 2017. The revaluation:

- must be carried out in the financial statements or statement of accounts of the financial year following the current financial year as at December 31st, 2017, for which the approval deadline expires after January 1st, 2019,
- must relate to all assets belonging to the same homogeneous category,
- shall be recorded in the relevant inventory and in the notes to the financial statements.

A substitute tax is payable at a rate of 16% for depreciable assets and 12% for non-depreciable assets; a substitute tax of 10% is due for the redemption of the revolution reserve.

In the case of sale for consideration, assignment to shareholders or allocation for purposes other than the business or the personal or family consumption of the entrepreneur of the revalued assets on a date prior to the start of the 4th financial year following that in which the revaluation was carried out, in order to determine the capital gains or losses, the cost of the asset prior to the revaluation is taken into account.

With regard to real estate only, the higher values booked in the financial statements are considered to be recognized with effect from the tax period in progress as at December 1st, 2020.

Revaluation of land and participations

By June 30th (and subject to a sworn expert's report), the revaluation of land and participations owned by natural persons as at January 1st, 2019 is re-proposed.

Compared to the past, however, the substitute tax rate has increased, now equal to 11% for qualified shareholdings, and 10% for non-qualified shareholdings and for building land and agricultural land.

Repeal of Ace

The "adventure" in the Italian tax system comes to an end with ACE tax relief (i.e. Aid to Economic Growth), which from 2019 is repealed.

FOCUS ON EMPLOYMENT

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

DID YOU KNOW THAT...

the operative part of the judgment ruling that "increasing severance indemnity" is constitutionally unlawful has now been issued?

In the operative part of judgment 194/2018 issued on 8 November 2018, the Constitutional Court has ruled that art. 3, paragraph 1, of Legislative Decree 23/2015 (governing open-ended employment contracts with increasing protections) is constitutionally unlawful when it links the amount of severance indemnity (for that part not modified by the Dignity Decree) payable to an employee who is dismissed without cause only to that employee's length of service. According to the Constitutional Court, this method of quantification "implies" that severance indemnity is rigid, having the characteristics of a "standardised, flat rate legal severance payment". In particular, for the Constitutional Court, the provision in question is contrary to the principles of equality and reasonableness and in conflict with employment laws and protections. The Constitutional Court takes the view that the court must be able to determine the indemnity payable to an employee – within the limits of its own discretionary powers and in accordance with the minimum limit of 6 monthly salaries (previously 4) and the maximum limit of 36 monthly salaries (previously 24) – taking into account not only the employee's length of service but also on the basis of other criteria which can be "systematically inferred from developments in the restrictive provisions governing dismissals (number of people employed, size of the company's economic activity, behaviour and situation of the parties)".

JUDGEMENT OF THE MONTH

When is dismissing an employee on sick leave lawful?

In its judgment No. 27656 of 30 October 2018, the Court of Cassation has again addressed the matter of employees who do other work whilst on sick leave.

The Facts

An employee who was involved in an accident in the workplace and was prescribed a rest period of 15 days using medical supports and ice packs, worked for the family business whilst on sick leave, as documented by an inspection conducted on request of the employer. The company therefore commenced a disciplinary procedure, which resulted in the dismissal of the employee for cause.

The employee resorted to the Court for the dismissal to be declared unlawful. The court dismissed the application. The employee filed an appeal and the trial court ruling was overturned.

In the case in issue, the local court had held that the conduct of the worker constituted a breach of an employee's duty of care, which should have induced the employee to observe the prescribed period of rest following the accident at work.

On the other hand, the Court of Appeal took the view that the conditions for dismissal for cause were lacking, having the medical-legal expert's report excluded that the work carried out in the days following the accident, albeit against the doctor's orders, would have exacerbated the patient's

condition. The Court of Appeal thus concluded that the protection set out in paragraph 5 of art. 18 of the Workers' Statute was applicable to the case examined (termination of the employment contract as of the date of dismissal and ordering the employer to pay an indemnity equivalent to 12 to 24 months of the last total salary, taking into account the length of service, the number of people employed, the size of the company's economic activity and the conduct and the situation of the parties).

The employer appealed to the Court of Cassation to have the Court of Appeal ruling overturned.

The ruling of the Court of Cassation

The Court of Cassation highlighted that, in Italian legal system, there is no absolute prohibition against an employee doing other work whilst on sick leave, but clarified that such type of conduct might constitute a justified objective reason for dismissal if associated with a breach of the general duties of fairness and good faith and the specific contractual obligations of diligence and loyalty. This would be the case where:

- the work carried out elsewhere by the employee provides, on its own, sufficient grounds to assume that the medical condition underlying the sick leave is inexistent, thus denoting fraudulence or simulation on part of the employee, or
- the work activity itself – assessed in relation to the nature and the characteristics of the employee's medical condition and taking into account the tasks performed – is such as to compromise or delay, even potentially, the worker's recovery and return to work, thus constituting a breach of an obligation which legal doctrine places in the category of preparatory and instrumental duties in the proper performance of a contract (see the Court of Cassation rulings No. 14046 of 1 July 2005, No. 21253 of 29 November 2012 and No. 10416 of 27 April 2017).

The Court of Cassation also established that the trial court's assessment of the impacts of work on the employee's recovery should focus on how the employee behaves when carrying out an activity that might delay his/her recovery and thus compromise his/her ability to carry out future work activities in a timely manner.

Therefore, according to the Court of Cassation, the trial court had rightly found that:

- in the daily activities carried out by the employee, as documented by the inspection conducted on request of the employer, the employee had used medical supports but had not observed the prescriptions of the medical practitioner;
- such behaviour had made the outcome of the period of convalescence uncertain, thus breaching the preparatory and instrumental duties linked to the proper performance of the contract, as well as the specific contractual obligation of diligence.

The Court of Cassation also held that the application of the indemnification protection set out in paragraph 5 of art. 18 of the Workers' Statute was correct in the case examined in light the existence of the fact, albeit supported by a psychological element that was not suggestive of a frequency such as to constitute just cause.

CASE LAW

Commission accrued by a "coordinator" agent should not to be included in the calculation of the termination indemnity payable under agency agreements

By means of judgment No. 25740 of 15 October 2018, the Court of Cassation has established the important principle that commission accrued by a "coordinator" agent, meaning an agent whose commission is based on the commission earned by the sales network he/she coordinates, should not to be taken into account in the calculation of the termination indemnity due under the agreement.

The Facts

A sales agent resorted to the Court for the employer to be ordered to pay an indemnity in the event of termination of the relationship pursuant to art. 1751 of the Italian civil code, in relation to an engagement to promote and place financial products.

The Court dismissed the application and the agent filed an appeal, which confirmed the decision of the trial court.

In that specific case, the local Court highlighted that:

- the agent had failed to demonstrate that, following the termination of the agency agreement, the employer had continued to enjoy significant benefits, and

the payment of an indemnity pursuant to art. 1751 of the civil code, for the work the agent had carried out as the "team manager" (coordinator of a group of agents), could not be deemed lawful. Indeed, according to the Court of Appeal, this would have constituted a double payment to be borne by the employer (to the individual agent who had concluded the transaction and to the team manager), thus, in contrast with the principle of equity cited by the same art. 1751 of the civil code.

The ruling of the Court of Cassation

In confirming the decision of the trial court, the Court of Cassation observed that the intention of art. 1751 of the civil code was to make the payment of the indemnity subject "*not only to an increase in the customer base, or, alternatively, to a significant increase in the volume of business transacted with the employer's existing customers, but also to the employer's continued enjoyment of significant benefits from such customer relationships, which, therefore, must continue in existence for a reasonable length of time*".

Indeed, art. 1751 of the civil code provides that "*On termination of the relationship, the employer shall pay the agent an indemnity if the following conditions are met: the agent has acquired new customers for the employer or has significantly increased the volume of business transacted with existing customers and the employer still receives significant benefits from the business concluded with such customers; the payment of said indemnity is fair, taking into account the circumstances of the case, specifically the commission which the agent would lose on the business transacted with such customers".*

Consequently, the Court of Cassation took the view that the provision in question is "*clear in its intention to reward, by means of the payment of an indemnity, any promotion activity that is directly aimed at customers, both in the more dynamic terms of acquiring new customers and in terms of increasing the volume of business concluded with those already acquired, and to link any such reward to a particular and evident interest of the employer and a significant commitment on part of the agent (thus deserving of an economic reward).*

In any event, in full alignment with the ruling of the Court of Appeal, the Court of Cassation highlighted that adding the indemnity set out in art. 1751 of the civil code to the commission received by the agent for having coordinated the team of agents would be in contrast with the principle of equity referenced in the provision in question. This is because the employer would be obliged to make a double payment.

Conclusions

In essence, it is clear from the foregoing ruling that in awarding a termination indemnity pursuant to art. 1751 of the civil code, the commission received for the activity of coordinating a team of agents should not be taken into account, since such commission is paid for business that is acquired not directly and personally by the agent but by the other agents he/she manages.

PRACTICE

Dignity Decree: initial clarifications of the Ministry of Labour

In its circular No. 17 of 31 October 2018, the Ministry of Labour has provided the first operational instructions on the application of Decree Law No. 87 of 12 July 2018, now converted into Law No. 96 of 9 August 2018 ("Dignity Decree").

a) New rules for fixed-term contracts

First of all, the circular has taken a position on the changes made by the Dignity Decree to the rules governing fixed-term contracts pursuant to Legislative Decree 81/2015, with the maximum duration now reduced significantly from 36 months to 24 months.

On this point, the circular clarifies that the parties concerned have the option to freely enter into fixed-term contracts for a maximum duration of 12 months and, after such term, must indicate the specific reasons for the continuation of the contract, specifically:

- temporary and objective needs, not linked to ordinary business activities;
- to replace other workers;
- requirements linked to significant, temporary increases in ordinary activities that could not be planned for in advance.

As clarified in the circular, the calculation of the 12-month period must take into account the overall duration of all of the fixed-term contracts entered into by the employer and the employee, including those already ended and those to be extended prior to expiry. In this regard, the circular provides the following example: "*Consider the case of a 10-month contract that is to be extended for a further period of 6 months. In such case, even if the extension period is added before the relationship exceeds the duration of 12 months, it will still be necessary to specify the reasons indicated above, since the overall length of the relationship will exceed such duration, as provided in article 19, paragraph 4, of Legislative Decree 81/2015*".

In any event, as provided in art. 19, paragraph 3, of Legislative Decree 81/2015, the parties will still have the option, once the 12-month limit has been reached, to enter into a new 12-month contract before the competent local Labour Inspectorate. The circular also clarifies, on this point, that the measures provided for in circular No. 13/2008 continue to apply, specifically:

- "*verification of the formal completeness and accuracy of the contract's contents*" and

- *"authenticity of the worker's consent to enter into the contract, without this having any certification effect on the actual existence of the preconditions to be met under laws in force".*

According to the circular, the extension implies that the reasons for the fixed-term contract being entered into have not changed, excluding the case where the date needs to be extended within the expiry of the contract. The circular therefore clarifies that:

(i) a fixed-term contract cannot be extended if the reasons have changed, since this would result in a new fixed-term contract, which would be subject to the renewal rules, and

(ii) an extension cannot be considered as such when the new fixed-term contract starts after the expiry of the preceding contract.

A novel aspect compared to the Jobs act is the reduction in the number of possible extensions, from 5 to 4, within the limit of the maximum duration of the contract and regardless of the number of existing contracts, excluding, however, seasonal work contracts.

In any event, the Dignity Decree has not amended the section of art. 19, paragraph 2, of Legislative Decree 81/2015 under which there is the option to derogate from the maximum duration of the fixed-term contract by collective bargaining. Therefore, collective bargaining agreements can continue to have a different duration, even in excess of the new limit of the 24 months. The circular does however clarify that if the provisions of a collective agreement signed before 14 July 2018 provide for a duration of fixed-term contracts of or longer than 36 months, such contact will continue to be effective up to the expiry of the associated collective agreement.

The circular also addresses the matter of the required structure of the contracts. In detail, the reference to art. 19, paragraph 4, of Legislative Decree 81/2015 has been eliminated (requirement for the term of the contract to be specified directly or indirectly in a written document), therefore providing greater clarity in terms of the existence of the foregoing requirement.

No changes to the provision that, in certain cases, the term of the contract can continue to be indirectly linked to the specific reason for which the person was hired, for example, as maternity leave cover when the date of the employee's return to work is not known in advance, but always within the limit of the maximum duration (24 months).

The circular also deals with the issue of identifying the additional contributions payable by an employer that uses fixed-term contracts. In fact, pursuant to art. 3, paragraph 2, of the Dignity Decree – as amended by the ratifying law – as of 14 July 2018, the additional contribution payable by an employer is 1.4% of the salary subject to social security in contracts that are not open-ended, increased by 0.5% on each renewal of a fixed-term contract, including staff-leasing contracts.

Therefore, the ordinary additional contribution of 1.4% is to be increased by 0.5% at the first renewal and then by a further 0.5% at each successive renewal. This increase does not apply to contract extensions.

b) New rules for staff leasing fixed-term contracts

The circular also clarifies a number of aspects linked to staff leasing fixed-term contracts, in light of the amendments introduced in the Dignity Decree.

Under Art. 2 of the Dignity Decree, the rules applicable to fixed-term contracts have been extended to staff leasing fixed-term contracts, which were previously governed under articles 30 ff. of Legislative Decree 81/2015, exception made solely for the provisions of art. 21, paragraph 2 (breaks between two

contracts, or stop and go), art. 23 (maximum number of fixed-term contracts allowed for each employer) and art. 24 (right of precedence).

The circular does however clarify that no limit is set for workers sent on fixed-term assignments by staff leasing companies. In detail, pursuant to art. 31 of Legislative Decree 81/2015, workers can be assigned to client companies on both an open-ended and fixed-term basis without the requirement to indicate a reason or specify the duration limit of the assignment, provided, of course, that the percentage limits set out in the provision above are observed.

The option remains for extension and renewal rules to be established by collective bargaining, as provided in art. 34, paragraph 2, of Legislative Decree 81/2015.

The circular also clarifies that, as a result of the reform, art. 19, paragraph 2, of Legislative Decree 81/2015 applies also to staff leasing fixed-term contracts. Consequently, once the time limit of 24 months has been reached, the employer cannot make use of a staff leasing fixed-term contract for the same worker, to carry out duties of the same level and of the same legal category.

In this case also, the circular clarifies that the calculation of the 24-month period must take into account all the staff leasing fixed-term contracts that have been entered into by the parties, including those preceding the date the reform came into force.

Furthermore, the circular highlights that if the duration of the staff leasing arrangement with a single client company exceeds 12 months or the assignment is renewed, the contract between the staff leasing company and the worker must specify a reason, which must be based on the needs of the client company and not those of the staff leasing company.

The circular also specifies that the obligation to indicate the reasons for using staff leasing fixed-term contracts arises when the same client company had previously entered into a fixed-term contract with the same worker, to carry out duties of the same level and category.

In this case also, clarifications are provided on the maximum number of workers under staff leasing contracts. Indeed, the law ratifying the Dignity Decree sets a limit on the use of workers under fixed-term staff leasing arrangements. The new version of art. 31 provides that, while the maximum percentage (20%) of fixed-term contracts set out in art. 23 continues to apply, a company can employ workers under fixed-term contracts and workers supplied under fixed-term staff leasing arrangements up to a maximum of 30% of the number of employees with open-ended contracts on its payroll.

In this case also, any existing collective agreement that provides for higher percentages shall continue to be effective up to its expiry. The aforesaid percentage limit applies to all new hires with fixed-term contracts or under staff leasing arrangements from 12 August 2018.

c) Transition period

The circular also addresses the issue of the transition period. Art. 1, paragraph 2, of the Dignity Decree had established that the new provisions would apply to fixed-term contracts entered into after the Decree came into force, and to renewals and extensions of contracts in force at the same date. The ministerial circular specifies that, in the ratification of the Decree, the aforementioned paragraph 2 was amended solely in relation to renewals and extensions, providing that, for these, the new rules would apply only after 31 October 2018. The aim is to exclude the renewal and extension of ongoing contracts from the immediate applicability of the new limits until that date.

Consequently, the provisions introduced with the reform became fully applicable on 1 November this year, including the requirement to indicate the conditions in the case of (i) renewals, always, and (ii) extensions, after 12 months.

Last but not least, the circular clarifies that the transition period applies also to staff leasing fixed-term contracts, since the Dignity Decree has in fact extended the rules applicable to fixed-term contracts also to staff leasing fixed-term contracts.

Data Processing Register and Impact Assessment: clarifications provided by the Data Protection Authority

Last October, the Data Protection Authority provided a range of significant clarifications on two of the main requirements – extremely important aspects of accountability – introduced with European Regulation 679/2016 on data protection and privacy ("Regulation"):

(i) the Data Processing Register, in response to the FAQs published on 8 October on the Data Protection Authority's website, and

(ii) the Data Protection Impact Assessment ("DPIA"), as provided in Measure No. 467 of the Data Protection Authority, issued on 11 October.

Data processing register

According to the Data Protection Authority, the "Register of processing activities" ("Register") – as provided in article 30 of the Regulation – must contain all key information concerning the processing activities completed by the Controller. The document must be in written or electronic form and is the first document to be promptly made available on request of the Data Protection Authority or during an inspection.

The Data Protection Authority has extended the pool of subjects that are required to keep the Register, so as to include all businesses that process personal data on a non-occasional basis (regardless of the number of people employed), commercial or craft establishments with at least one employee, self-employed professionals, associations and foundations and, lastly, condominiums, where "special categories" of data are processed.

The Data Protection Authority has pointed out that the Register must contain the required level of "minimum information", specifically:

- the purpose of each processing operation. In this regard, the recommendation is to also indicate the legal basis for processing, in addition to specifying the purpose for each type of processing (processing of employee data to manage the employment relationship; processing of supplier contact details when managing orders). The following recommendations are also made, again in reference to the legal basis: where "special categories of data" are processed, indicate one of the conditions set out in art. 9, par. 2 of the Regulation; where data relating to criminal convictions and offences are processed, indicate the specific provisions (national or EU) under which the processing is allowed pursuant to article 10 of the Regulation;

- the categories of data subjects (e.g. customers, suppliers and employees) and the categories of personal data (e.g. personal details, medical information, biometric data);

- the categories of recipients to whom the data are disclosed (other controllers to whom the data are disclosed, including their category, for example, to social security institutions to fulfil payment obligations). The Data Protection Authority also advises that it would be appropriate to indicate any other persons to whom – as processors or sub-processors – the data are

disclosed (e.g. to payroll processing companies). This is to ensure that the Controller has knowledge of the number and type of entities to whom data processing operations are assigned;

- any transfer of data to third countries, indicating the Countries/the Third Parties to which the data are transferred and the safeguards applied in accordance with the Regulation;
- the period for which the personal data are stored (e.g. in the case of employment relationships, the data must be stored for 10 years from the date they were last recorded) and, lastly,
- a general description of the (technical and organisational) security measures put in place for each processing operation, including the possibility to reference external documents of a generic nature (e.g. internal procedures) to allow a more comprehensive assessment.

The Data Protection Authority has reiterated that the Register must be updated on an ongoing basis so that its contents reflect the actual situation of the processing operations carried out. In essence, any changes must be immediately recorded in the Register and explained.

The Processor is also required to keep a Register of the processing operations. The Data Protection Authority has clarified that the keeping of such Register must comply with the following:

- if the Processor is acting on behalf of customers who are separate and autonomous controllers (e.g. software house company), the information set out in article 30(2) of the Regulation must be recorded in the Register in reference to each of the aforesaid controllers. In this case, the Processor will divide the Register into the same number of sections as the number of autonomous controllers on behalf of which he/she is acting or, alternatively, a reference can be added, for example, to a customer (controller) information card or database containing a description of the services supplied to them. The customer information cards should in any event contain the information required under article 30(2) of the Regulation;
- having regard to the "record of all categories of processing activities carried out", a reference can be made to the contents of the contract of appointment as processor, which, pursuant to article 28 of the Regulation, should set out, in particular, the nature and purpose of the processing, the type of personal data and categories of data subjects and the duration of the processing;
- likewise, in the case of sub-processors, the Register of the processing operations carried out by them can specifically reference the contents of the contact entered into between the sub-processor and the Processor pursuant to article 28 of the Regulation.

Data protection impact assessment

Measure No. 467 of the Data Protection Authority provides a list of 12 types of processing activities in relation to which a Data Protection Impact Assessment (DPIA) must be carried out. Such requirements are therefore in addition to the provisions contained in article 35 of the Regulation and in the guidelines issued by the WP29 (now European Data Protection Board), as provided in 2017.

The DPIA is a particularly delicate operation in terms of "privacy compliance", since it requires the Controller to carefully assess and consider the related technical and organisational measures, which must be able to prevent risks to the rights and freedoms of the natural persons concerned.

In addition to the three examples given in article 35 of the Regulation – profiling, systematic monitoring of a publicly accessible area on a large scale and processing on a large scale of special categories of data (formerly, "sensitive data") – there are nine other cases, as listed in the WP29 guidelines, for which the DPIA is mandatory. The Italian Data Protection Authority has provided further clarifications in this respect.

In detail, the Data Protection Authority requires that a DPIA is carried out in advance for the following categories of processing:

- evaluation-type processing, scoring on a large scale and profiling;
- Automated-decision making with legal or similar significant effect for the data subjects (e.g. screening customers of a bank using information obtained from a central credit register);
- processing that enables the systematic use of data for observation and monitoring purposes (e.g. online or using apps);
- processing on a large scale of strictly personal data (e.g. emails) or which have impacts on fundamental rights (location, which if collected may affect freedom of movement);
- processing in the context of employment relationships, using technological means (e.g. video surveillance or geolocalisation) that enable the remote monitoring of an employee's activity;
- processing that involves vulnerable data subjects (minors, people with disabilities, etc.);
- processing with innovative technologies (IoT or AI);
- processing that involves the exchange of data between several controllers, on a large scale;
- processing by means of interconnection or similar methods (e.g. mobile payments);
- processing of "special categories" of data or, in any event, concerning criminal convictions;
- systematic processing of biometric data and, lastly, genetic data.

From a "comparative" perspective, compared to the French Data Protection Authority (CNIL), the Italian Authority does not make specific reference to processing in relation to "whistleblowing systems".

It should be noted, however, that the list of the 12 types of processing – due to be published on the Italian Official Journal – is not an exhaustive list: while the DPIA is required when at least one of the 9 cases listed in the WP29 guidelines is present, it can (and should) be also carried out whenever deemed necessary by the Controller.

For further information please contact:

Avv. Vittorio De Luca
De Luca & Partners
Largo A. Toscanini, 1
20122 Milan
Tel. +39 02 365 565 1 Fax +39 02 365 565 05 email: info@delucapartners.it;
www.delucapartners.it

or

Dott. Stefano Turchini
HR Capital
Gall. San Babila 4/B
20122 Milan
Tel. +39 02 365 930 1 Fax +39 02 365 930 00 email: info@hrcapital.it
www.hrcapital.it

RSM STUDIO PALEA LAURI GERLA

Milan office - Foro Buonaparte 67, 20121 - Milan
Tel +39 02 89095151
Fax +39 02 89095143

Rome – Via delle Terme Deciane 10 – 00153, (registered office and operating office)
Turin – Via Ettore De Sonnaz 19 – 10121 (operating office)

www.rsm.it

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