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Subject: New tax rules enacted by the 2018 Stability Law (Law 205 dated December 27, 2017)

The 2018 Stability Law (i.e. the Budget Act passed last December) introduced important new tax rules. In this newsletter we shall begin to explain some of the most important innovations of interest to enterprises.

1. VAT rate increases postponed to 2019

The new Stability Law postponed once again the expected increases in VAT rates, which were supposed to go into effect as of January 1, 2018. The ordinary 22% rate and the 10% reduced rate are thus confirmed for 2018. For the ensuing years, the law confirms gradual VAT increases: the 10% reduced rate will rise to 11.5% in 2019 and 13% in 2020, while the ordinary 22% rate will rise to 24.2% in 2019, 24.9% in 2020 and 25% in 2121, unless the government decides on further "sterilizations".

2. Benefits for investments: extension of "super depreciation"

The 2018 Stability Law extended the terms that allow taxpayers to benefit from the availability of "super depreciation." For the purposes of calculating depreciation allowances and finance-lease payments, the percentage of the increase in the price paid to buy new tangible fixed assets will be limited to 30% (instead of the previous 40%). The new law excludes from the benefit vehicles used exclusively as earning assets in the taxpayer's business. The assets concerned here are the ones listed in art. 164.1 of the Income Tax Code, such as those owned by vehicle-rental companies or driving schools, or those used to perform public services (e.g., taxicabs). Conversely, the super depreciation benefit continues to be available for "heavy" vehicles (this term is used essentially to mean trucks).

Vehicles subject to limited deductibility (including multi-use vehicles assigned to employees through most of the tax period) were and remain excluded from the benefit.

In particular, the new law extends the super-depreciation benefit to assets bought between January 1 and December 31, 2018, or even up to June 30, 2019, provided that the seller accepted the relevant purchase order by December 31, 2018, and further provided that the buyer had already made advance payments amounting to at least 20% of the acquisition cost.

According to the previous mechanism, the percentage of the increase was 40%. This rule (without the new limitation introduced for vehicles) still applies to investments made up to December 31, 2017, and to those that became eligible for the tax benefit between January 1 and June 30, 2018, provided that the seller accepted the relevant purchase order by December 31, 2017, and further provided that the buyer had already made advance payments amounting to at least 20% of the acquisition cost.

The super-depreciation benefit continues to be unavailable for:

- investments in tangible earning assets whose fiscal depreciation rates are less than 6.5%;
- investments in buildings and other constructions;
- investments in types of assets specified in Annex no. 3 of Law 208/2015 (these include rolling stock and other railroad equipment).

3. Benefits for investments: extension of "hyper depreciation" as per the "Industry 4.0" model

The 2018 Stability Law also extends the "hyper-depreciation" benefit, which is intended to encourage technological and digital transformation processes according to the "Industry 4.0" model.

It essentially concerns the automation and interconnection of industrial processes, and applies to investments in new tangible earning assets of the types listed in Annex A to the 2017 Budget Act (Law 232/2016).
It should be remembered that the hyper-depreciation benefits allows a 150% increase in the cost of buying the aforesaid assets with high technological content that according to the "Industry 4.0" paradigm is functional for implementing technological transformation, plus a 40% increase in the purchase cost of intangible assets (software) that are likewise functional for implementing "Industry 4.0" (the assets in question here are listed in Annex B to the aforementioned Law 232/2016.
The extension makes the hyper-depreciation benefit applicable to investments made up to December 31, 2018, or even December 31, 2019, provided that the seller accepted the relevant purchase order by December 31, 2018, and further provided that the buyer had already made advance payments amounting to at least 20% of the acquisition cost. It is worth noting that not only must the investment be made during the period when the benefit is available. It is also necessary that the asset be actually put in service and connected to the company's production management system or to its supply chain. To avoid interference between this benefit and companies' investment decisions, the new law also allows companies to continue to opt for hyper-depreciation if the assets to which the benefit had originally been applied are replaced with others (and the benefit has not been revoked), provided that the technological characteristics of the new assets are similar to or better than the ones specified in Annexes A or B to Law 232/2016.

The original asset must be replaced in the same tax period in which the benefit is claimed.

The investment made to procure the replacement, the characteristics of the new asset (such as enable it to be included in the lists presented in Annexes A and B to the 2017 Budget Act) and the fulfillment of the interconnection requirement must all be attested to in accordance with the rules referred to in art. 1.11 of Law 232/2016. Essentially, in this case too the taxpayer must submit a statement by its legal representative attesting to compliance with the relevant rules, or, in the case of assets whose individual acquisition cost is greater than €500,000, a technical appraisal sworn to by an engineer or an industrial expert or an accredited certification agency.

If the cost of the replacement investment is lower than the cost of the original asset, the law establishes that the benefit will continue to apply for the residual amount until the lower cost of the new investment has been covered.

The law also adds the following three items to the list (contained in Annex B of Law 232/2016) of types of intangible assets that can qualify for the benefit:

- supply-chain-management systems used to facilitate drop shipping in e-commerce;
- software and digital services for immersive, interactive and participatory use, 3D reconstructions and augmented reality;
- software, platforms and applications for logistics management and coordination, with high-performance characteristics for the integration of service activities (intra-factory and factory-field communication with telematic integration of on-field and mobile devices, and telematic monitoring of performance and failures in on-field devices.

4. Elimination of "fuel expenses sheet"

The 2018 Stability Law repeals the requirement to use "fuel expense sheet" on or after July 1, 2018. As of that date, all purchases of vehicle fuel by VAT taxpayers from roadside distributors must be documented by electronic invoices.
In addition, the law provides that for the purposes of the deductibility of VAT and cost, as of July 1, 2018, fuel purchases must be paid for by credit cards, debit cards or prepaid cards issued by financial operators that are subject to the obligation to report such transactions to the tax registry.

5. The payback requirement in the pharmaceutical sector

The 2018 Stability Law introduced a set of rules designed to clarify and standardize the VAT treatment of the payments that pharmaceutical companies are required to make if the ceiling on the cost of pharmaceutical products distributed by the National Health Service is exceeded (the so-called payback requirement).

As of January 1, 2018, pharmaceutical companies are authorized to deduct the amount of VAT charged to them on the sums they must pay in order to limit the costs charged to the National Health Service. The right to deduct VAT arises at the moment when the aforesaid payments are made. For IRES and IRAP purposes, the costs of such payments will be deductible in the tax period in which they are made. Depending on the types of pay-back that pharmaceutical companies are liable for, the law establishes specific requirements and procedures.

6. Payment of wages and salaries

The 2018 Stability Law also establishes that as of July 1, 2018, employers

will not be allowed to pay wages and salaries (or advances thereon) in cash, regardless of the types of contract under which their employees work. Any violation of this rule will be punished by an administrative fine ranging from €1,000 to €5,000.
This ban on cash payments applies to the types of employment described in art. 2094 of the Italian Civil Code, regardless of how the employee performs his or her duties, regardless of how long the employee has worked for the employer, and regardless whether his or her employment originated under a contract for coordinated and continuous collaboration or under a contract established in any form between a cooperative and its members, pursuant to Law 142/2001. Moreover, the new law also establishes that the employee's signature on his or her payslip does not constitute proof that he or she has received his or her wage or salary.
Accordingly, wages and salaries must be paid exclusively through a bank or a post office, in one of the following ways:

a) fund transfer to the bank account identified by the IBAN number specified by the employee;
b) electronic payment instrument;
c) cash payment at the bank or post office where the employer has opened a treasury account with a payment order;
d) issuance of a check consigned directly to the employee or, if the employee is proved to be unable to take delivery thereof, to a person authorized in writing to receive it.

The aforesaid requirements do not apply:

- to employees of the public administrations referred to in art. 1.2 of Legislative Decree 165 dated March 30, 2001;
- to the domestic employees referred to in Law 339 dated April 2, 1958, and to those working under national collective contracts applicable to persons employed in family and domestic services, if their contracts were entered into by the labor unions which are deemed most representative at the national level.

7. Extension of electronic billing as of 2019

The 2018 Stability Law has established that in order to rationalize the billing and registration procedure, invoices for sales of goods and services between parties who are resident in Italy, or established or identified in this country, and any variations made therein, must be issued electronically, using the Exchange System. The new electronic-billing obligation will apply to all invoices issued on or after January 1, 2019. Moreover, under the new law economic operators may use intermediaries to transmit their electronic invoices to the Exchange System, if they and their customers have so agreed, subject to the responsibilities of the party that has sold the goods or services in question.
The new law establishes expressly that if an invoice is issued otherwise than electronically between parties resident or established in Italy, that invoice will be understood as never having been issued, and the parties thereto will be subject to the fines referred to in art. 6 of Legislative Decree 471 dated December 18, 1997. In this case, the seller and the buyer can avoid the fine referred to in art. 6.8 of the aforesaid Legislative Decree 471 by discharging through the Exchange System the documentary obligations specified therein.

In essence, if they have not received the electronic invoice within four months after the transaction was consummated, they must issue a self-invoice by the thirtieth day thereafter, having remitted the relevant amount of VAT.

According to the new rules, electronic invoices issued to end customers shall be made available to the latter by the Revenue Agency's telematic services. An analog copy of the electronic invoice will be made available directly to the addressee by the party that issued it. In any case, the customer can decide to waive delivery of an electronic copy of the invoice, or an analog copy. The aforesaid provisions are not mandatory for "minimum taxpayers" who operate under the so-called "advantageous regime" referred to in art. 27, paragraphs 1 and 2 of Law-Decree 98 dated July 6, 2011, and those who opt for the flat-rate system referred to in art. 1, paragraphs 54 through 89, of Law 190 dated December 23, 2014.

We shall describe the innovations regarding electronic invoices in greater detail in our next Taxnews.

January 31, 2018

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