



Newsletter

Special Edition
28 July 2011

Legal-Tax
Company law and taxation

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A number of important legal provisions were adopted in July, introducing new systems and changing the rules of others.

The changes follow the implementation of the law converting the '*Decreto Sviluppo*' [Decree Law 70/11] and Decree Law 98/11 - and relative conversion law - containing the '*Manovra Finanziaria*'.

This Special Edition of the Newsletter provides an overview of the main changes.

This Newsletter is structured as follows:

- the first part focuses on changes in the law, sub-divided by the provision introducing them;
- the second part focuses on changes in tax regulations, sub-divided by the provision introducing them;
- the third part focuses on changes in tax litigation rules, sub-divided by subject (regardless of the provision introducing them).

Law

a) Changes introduced with the 'urgent provisions for the economy' [also known as the '*Decreto Sviluppo*']

The '*Decreto Sviluppo*' [Decree Law no. 70 of 13 May 2011] came into force on 13 July 2011.

The rules introduce important changes in various sectors including: scientific research, tax simplification and citizen services.

We have listed below some of the principal changes in the area of public contracts and public and private construction.

See our Newsletter 6/11 for information on changes to obligations concerning the protection of personal data.

As regards public contracts, note the following:

- introduction of a ceiling on expenditure for 'variations';
- containment of compensation costs in the event of a change in the price of individual construction materials;
- establishment by the Prefect's Office of a list of suppliers and service providers not at risk of mafia infiltration;
- introduction of penalties for 'reckless' lawsuits [i.e. those brought for purely spurious reasons];

- classification of reasons for excluding tenders [these may only be those provided for by the code for public contracts and by the relative regulations, regardless of any additional clauses provided for by the public contractor in the tender documents];
- obligation to follow the ranking list in the event of termination of the contract;
- raising of the limits on value for awarding tenders for works via negotiated procedures or for access to the restricted simplified procedure for works contracts;
- generalisation of ex post checks on participation requirements for tenders by public contractors.

With reference to private construction, the most significant changes are as follows:

- introduction of the system of 'tacit consent' [i.e. the procedure by which a petition is considered upheld in the absence of a response from the public authorities within a specific term] for the issuing of building permits, except in cases where there are environmental, landscape or cultural restrictions;
- extension of the obligation to file a certified report of commencement of business (SCIA) to include building works previously carried out with the notification of commencement of business (DIA);
- legislative classification of a contract format known as 'transfer of space/volume';
- replacement, for civil residential buildings, of the 'noise pollution' report [provided for by Law no. 447/95] with a 'self-certification' sworn by an eligible technician.

The provision also states that the registration of property transfer contracts replaces the obligation to notify the local public safety authorities.

This obligation, the violation of which is punished with a fine of Euro 1,500, is provided for by art. 12 of Decree Law 59/78, which states that '*Any person who transfers property or use of property or for any other reason permits, for longer than one month, the exclusive use of a building or part of a building, is required to inform the local public safety authorities within 48 hours of the handover of the property, of its precise location, details of the buyer, tenant or the person benefitting from the asset and the details of the identification document of said person*'.

Finally, note that the conversion law changed the rules on the reporting of delays in payment.

The Legislator has stated that, in the event of regularisation of payments:

- the credit institution must inform the database within 7 days of receipt of the payment;
- the report of a delay in payment must be cancelled within 5 working days of the above communication.

b) '*Manovra Finanziaria*'

The law converting Decree Law no. 98 of 6 July 2011, containing 'urgent provisions for financial stabilization' came into force on 17 July 2011.

In addition to economic measures, the provision also introduces rules aimed at containing public expenditure and increasing revenue.

The main changes regard:

- the ceiling on remuneration for public office holders, on use of government cars and on state flights;
- some rules on legal proceedings involving disputes concerning social security and expropriations for public use;
- liberalization of certain businesses [sales of food, drinks and newspapers at petrol stations, organisation of poker games, intermediation on the labour market];
- reduction in incentives affecting tariffs on energy supplies;
- tax exemption on capital income for investments in new businesses by mutual funds [specialised in start-ups].

The Legislator has stated that publicly-owned companies are subject to specific transparency obligations. More specifically, the websites of all public entities and bodies must contain:

- a list of the companies in which they directly or indirectly hold shares, even minority interests, also indicating the amount
- a graphic diagram showing the connections between the entity or body and the companies or between subsidiaries
- indication of whether the individual companies have broken even in the three years since publication.

As regards the new rules in the area of law, note that there has been an increase of

between 10% and 20% in the amount to be paid at the start of civil proceedings, depending on the value of the case.

Furthermore, the payment of this 'standard contribution' has been extended to proceedings relating to compulsory pension and insurance disputes, labour disputes and disputes involving public employment relationships, if the parties have a taxable income for income tax purposes that is higher than specific parameters and for appeals brought before Provincial or Regional Tax Commissions.

Tax

a) Changes introduced with the 'urgent provisions for the economy' [also known as the '*decreto sviluppo*']

For provisions that have not been significantly amended on conversion into law, please see our Newsletter dated 20 May 2011 [Special Edition].

Digital accounting

Company books and accounting records may be kept in digital format provided the owner of the enterprise or his representative comply with the obligations of progressive numbering and certification once a year by applying a digital signature and date stamp.

Before these changes, the signature and date stamp had to be applied every three months.

The one-year timeframe also applies for books and accounting records on the basis of tax rules.

Tax surpluses

It is possible to file a supplementary tax return within 120 days of the ordinary filing deadline to change a request for a refund of surplus IRES or IRAP credit to a request to offset said credits.

It is not possible to adopt this option if the refund has already been, even partially, paid.

VAT warehouses

Law no. 106 of 2011 [law converting the '*Decreto Sviluppo*'] made some amendments to art. 50-bis of Decree Law 331/93.

Legislative references have been added to the first paragraph to better identify tax and

customs warehouses as places in which the VAT warehouse regime may be used in the absence of further authorisations.

Important procedural changes have been introduced in paragraph 4 and subsequent paragraphs.

According to the new wording of art. 50-bis, par. 4, lett. b, as revised by Law no. 106 of 2011, goods released for free circulation in the EU may only be introduced into VAT warehouses with an appropriate guarantee.

This guarantee may be redeemed only on payment of the VAT, which is paid when the goods leave the warehouse.

AEO-certified subjects and those benefitting from the exemption granted by art. 90 of the Italian Customs Law are not required to file a guarantee.

Paragraph 6 now specifies that the guarantee may be redeemed provided the subject removing the goods sends a communication to the warehouse manager containing data to prove that the tax has been paid.

The procedure for carrying out the latter obligation will be clarified with instructions to be issued by the Customs Agency.

b) '*Manovra Finanziaria*'

Withholding tax of 5%

A withholding tax of 5% has been introduced on the interest paid by a company resident in Italy to a company resident in another EU member state.

This withholding tax applies when, provided all the other conditions required by law to benefit from the exemption exist, the non-resident company receiving the interest is not the effective beneficiary, but rather the interest is to be used to pay interest and other revenue on debenture loans with specific characteristics.

More specifically, the debenture loans must be traded on a regulated market in a European Union Member State or a State belonging to the European Economic Area and must be guaranteed by the resident companies paying the interest, by their parent company or by another company controlled by the same parent.

The new withholding tax applies to interest paid with effect from 6 July - the date on which the law came into force.

The new rule also applies to loans existing on the date the law came into force - in relation to which interest has already been paid -

provided that, by 30 November 2011, the company that paid the interest has paid a substitute tax of 6% plus the related interest.

New IRAP rates

With effect from the tax year in progress on 6 July, the IRAP rate has been raised to 4.65% for banks and other financial entities and companies and to 5.90% for insurance companies.

New regime for the carrying forward of losses

The tax losses of IRES taxpayers may be carried forward indefinitely and may be offset with future taxable income, up to a limit of 80% of the taxable income.

Consequently, should the losses exceed 80% of the taxable income, the excess may be carried forward indefinitely and used to reduce the taxable income in subsequent years, still within the 80% limit.

It will continue to be possible to carry forward indefinitely the losses produced in the first three financial years.

The new rules do not apply to losses produced before the '*Manovra*' came into force.

Realignment of tax and book values

The law has introduced the possibility of attributing fiscal relevance to higher values - relating to goodwill, trademarks and other intangible assets - of controlling equity interests booked in the financial statements following extraordinary corporate restructuring operations.

The realignment is subject to payment of a 16% substitute tax.

Automatic revocation of inactive VAT numbers

VAT numbers that have not carried on any business activity, art or profession, or which have not declared any such activities, for three consecutive financial years from the year the number is attributed, will be automatically revoked.

Failure to communicate a termination of business

The holder of a VAT number who fails to communicate in due time the termination of business may regularise the violation -

provided it has not yet been noted by the Revenue Agency - by 4 October by paying a fine of € 129.

The payment must be made using the F24 payment form with identification data, which does not permit offsetting between credits and liabilities, indicating the tax code 8110.

Studi di settore [assessment tools used by the Revenue Agency to quantify the revenues of a taxpayer]

The penalty regime applicable in the event of failure to submit the form containing data used to apply 'studi di settore', in cases where the taxpayer is required to do so and has failed to despite a specific request by the Revenue Agency, has been made more severe.

The Revenue Agency may carry out a presumptive assessment in the event of an omission or untrue indication of data in the communication of data for the purpose of applying the *studi di settore* or if an inapplicable reason for exclusion or non-application has been indicated. This rule applies if the higher income assessed following the application of *studi di settore* is more than 10% higher than the income declared.

Ravvedimento operoso [voluntary disclosure of tax evasion]

For payments made no more than 15 days after the due date, the ordinary penalty is reduced to 2% for each day's delay. It is still possible, within the same time limit, to take advantage of the *ravvedimento operoso* facility, benefitting from a reduction of the penalty to one tenth (0.2% for each day's delay).

Minimum regime and new production initiatives

A new flat-rate regime, to replace those currently in force (e.g. minimum regime), has been introduced for natural persons who start a new business or freelance enterprise starting from 2012 or who started such activities after 31 December 2007.

Under the new regime, a substitute tax of 5% will apply for the tax year in which the activity started and in the four subsequent tax years. The new regime also applies after the fourth tax year after the activity began, but not if the taxpayer is over thirty five years of age.

The beneficiary is recognised provided that:

1. the taxpayer has not, in the previous three years, carried on any business, art

- or profession, even in the form of a partnership or family business;
2. the new activity does not merely constitute the continuation of another activity previously carried out as an employee or self-employed worker;
3. in the event of the continuation of an activity previously carried out by another person, the revenue for each tax year prior to the recognition of the beneficiary did not exceed € 30.000.

Variable compensation

The system for taxing variable compensation paid as bonuses or stock options to executives and collaborators working in the financial sector has changed.

The new rules provide for the application of an additional rate of 10% on compensation exceeding the fixed remuneration amount.

Before the reform, the additional taxation only applied on the variable compensation exceeding three times the fixed remuneration amount.

The new rule applies with effect from 17 July 2011 (the date on which the conversion law came into force).

Litigation

Enforceable assessments and provisional collection in the event of an appeal against the assessment

In our Newsletters dated 6 August 2010 and 20 May 2011 we commented on the rule that rendered immediately enforceable tax assessments issued in relation to 2007 and subsequent years. This rule entitled the Revenue Agency to collect the higher amounts assessed without first creating lists to be communicated to the taxpayer through a tax notice.

The application of this rule has been postponed to apply to tax assessment notices issued from 1 October 2011, rather than from 1 July 2011 as originally stated.

At the same time, the amount of the higher taxes assessed and the related interest that must be provisionally paid in the event of an appeal against the assessment before the tax court has been reduced from half to one third.

It is still possible to request suspension of the enforceability of the notice in the event of an appeal against a tax assessment before the

tax commission.

Standard contribution for tax disputes

The obligation to pay a standard contribution for appeals lodged before the tax commissions at first and second instance has been introduced.

The contribution amount is based on the value of the case (tax requested with the tax assessment notice, excluding interest and penalties) and varies from a minimum of Euro 30 for cases worth up to Euro 2.582,28 to a maximum of Euro 1.500,00 for cases worth more than Euro 200.000,00.

Settlement of pending tax disputes worth up to Euro 20.000

Cases worth up to Euro 20.000 pending as at 1 May 2011 before the tax commissions or the ordinary court at any stage of proceedings, that relate to tax assessment notices issued by the Revenue Agency, may be settled by paying an amount proportional to the value and the stage of proceedings.

More specifically, tax disputes may be settled by paying Euro 150 for cases worth up to Euro 2.000 and, if the value of the case is between Euro 2.000 and Euro 20.000:

- 30% of the value of the case if the case is pending at first instance;
- 10% of the value of the dispute if the Tax Authorities were on the losing side according to the judgement delivered before the appeal was lodged;
- 50% of the value of the dispute if the taxpayer was on the losing side according to the judgement delivered before the appeal was lodged.

The amounts owed to settle pending disputes must be paid with a single payment by 30 November 2011.

Payment in instalments without a guarantee for amounts due in the event of a settlement proposal [accertamento con adesione] or court settlement [conciliazione giudiziale]

It is no longer necessary to produce a guarantee (insurance or bank guarantee) for payments in instalments of amounts over Euro 50.000 due when settling tax proceedings.

Nevertheless, in the event of a failure to pay even only one instalment, the penalty for non payment or late payment of taxes (i.e. 60%) will be applied.

The new rules do not apply to settlement proposals and court settlements that have already concluded.

New limits for the registration of a mortgage and for the expropriation of real estate belonging to a taxpayer

New quantitative limits have been established on the tax debts for which the collection agent may register a mortgage or expropriate real estate.

More specifically, such actions are permitted only if the overdue tax debts exceed:

- Euro 20.000, if the building is the taxpayer's principal residence and if the tax debt leading to registration on the list of tax debts has been contested or may still be contested before the tax commissions;
- Euro 8.000,00, in all other cases.

Before registering a mortgage, the Collection Agent must also serve the taxpayer with a written payment demand containing an

express warning that, if the tax debt is not paid within 30 days, a mortgage will be registered.

Interest on late payments

In relation to lists of tax debts established from 13 July 2011, the interest on late payments due in the event of payment after the 60th day following notification of the tax bill, will be paid on the taxes and will no longer be calculated on the amounts requested as penalties and interest.

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