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Circular No. 01/2023

Bolzano, 6 January 2023

Subject: Changes for 2023 for businesses and self-employed professionals

The Budget Law for 2023 was adopted by Law No. 197 of 29 December 2022 and published on the same day in Official Gazette No. 303. It has been in force since 1 January 2023. The new government, too, had to resort to a vote of confidence, which is why most of the provisions, as in previous years, are crammed into a single article which consists of 903 paragraphs, is completely unstructured and is barely readable. On the same day, the usual deferral decree (the so-called "decreto mille proroghe") was also published in the Official Gazette as Law Decree 198/2022, and that decree already corrects or supplements a number of provisions of the aforementioned Budget Law. The legislative texts do not contain any fundamental reforms, but rather corrections to the existing support measures; nevertheless, the changes are not without effects on day-to-day business. Below is a first overview of the changes for businesses and self-employed professionals, as always without any claim to completeness. In separate circulars we will discuss the changes concerning real estate and construction, the changes in the area of value added tax and other amendments. This year's finance law has also introduced a complex set of rules allowing past errors to be corrected with marginal penalty surcharges; we will inform you about this measure in a separate circular. The many changes in labour law are expressly not dealt with, as you will certainly be informed about these by your labour consultant. As legal references to the Budget Law, only the paragraphs of Art. 1 are cited.

1. New provisions, repeals and amendments concerning various tax reliefs

As befits the new year, we begin once again with the good news on various tax reliefs:

Tax credits for businesses on electricity and gas for the first quarter of 2023 (paras. 2-9)

In view of the ongoing energy crisis, the Budget Law first of all extends and improves the various tax credits for businesses aimed at mitigating the price increases for electricity and gas:

Aid for electricity-intensive businesses

For electricity-intensive businesses, a tax credit of 40% on the energy component of electricity costs was most recently provided for in 2022. This relief is now extended to the first quarter of 2023 and increased to 45%. The condition is that energy costs in the fourth quarter of 2022 rose by more than 30% compared with the same period of 2019.

Aid for gas-intensive businesses

For gas-intensive businesses, a tax credit of 40% of gas costs was most recently granted in 2022; it is now likewise extended to the first quarter of 2023 and raised to 45%. The condition is that the gas price in the fourth quarter of 2022 rose by more than 30% compared with the same period of 2019.

Tax credit for non-gas-intensive businesses

For non-gas-intensive businesses as well, a tax credit of 40% was most recently provided for, which is now extended to the first quarter of 2023 and likewise increased to 45%.
As regards the access requirements relating to the price increase, the same conditions and considerations apply as set out above for gas-intensive businesses.
In this connection, it should also be recalled that this credit is likewise available to transport companies operating gas-powered trucks.

Credit for non-energy-intensive businesses

For non-electricity-intensive businesses with an electricity connection of at least 4,5 kW, a tax credit of 30% was most recently provided for in 2022; it is now extended to the first quarter of 2023 and raised to 35%.

Support from electricity and gas suppliers

The Budget Law once again contains an obligation for electricity and gas suppliers to calculate, upon a corresponding request by the customer, the price increase and the tax credit due. The ARERA authority is instructed to lay down the details and the deadlines for applications and calculations by way of a circular.
In this connection, a note on the price increases for gas: as in last year, when determining the 30% price increase for gas – both for gas-intensive and for non-gas-intensive

businesses – no reference is made to the price increases of the individual business. What is decisive is instead the price trend of MI-GAS as published by the GME, and there the increase of 30% is (unfortunately) amply given. According to our calculations, the average of that gas price in the months of October – December 2019 was around 14,607 euro/MWh; the average for the months of October, November and December 2022, again on the basis of the GME publications, was by contrast 90,73 euro per MWh. The price increase of 30% is therefore amply given.
It should be added that, when determining the costs of the quarter, reference is made to the supplies attributable to the period and not to the invoicing.

Offsetting of the credits

The offsetting of the tax credits on electricity and gas accrued or accruing in the first quarter of 2023 in form F24 may now be carried out until 31 December 2023. Thereafter the credit is lost; where appropriate, an assignment to third parties should be considered, whereby, however, the entire credit must always be assigned. The tax codes required for offsetting in form F24 still have to be established by a separate decree. As in the past, the credits remain exempt for IRPEF, IRES and IRAP purposes.
<u>Important: we once again urge you to observe scrupulously the deadlines for offsetting or assigning the various tax credits from the previous year, as otherwise they will be irrevocably lost; please refer to our circulars of last December.</u>

Agricultural tax credit (Art. 1 paras. 45 – 51)

Agricultural and fishing businesses are granted a tax credit of 20% on the costs of petrol and diesel for the first quarter of 2023 as well. These must be evidenced by purchase invoices. The extension to greenhouses and livestock buildings most recently granted also remains in place unchanged in 2023. Offsetting by means of form F24 is permitted until 31 December 2023.
In addition, an amendment to the earlier provisions makes it possible for the offsetting or the assignment of the same credits from the third quarter of 2022 still to be carried out until 31 March 2023. Originally, offsetting by 31 December 2022 had been required here.
The relief is disregarded for income tax purposes and may also be combined with other subsidies, provided that the subsidies do not exceed the costs incurred.
In summary, the position of the tax credits is as follows:

Subjekte	Steuergutschriften

<table>
<tr><th></th><th>1. Quartal 2022</th><th>2. Quartal 2022</th><th>3. Quartal 2022</th><th>4. Quartal 2022</th><th>1. Quartal 2022</th></tr>
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<tr><td>Gasintensive Unternehmen</td><td>10%</td><td colspan="2" rowspan="2">25%</td><td rowspan="2">40%</td><td rowspan="2">45%</td></tr>
<tr><td>Nicht gasintensive Unternehmen</td><td>---</td></tr>
<tr><td>“agromchanische” Unternehmen</td><td>---</td><td>---</td><td>---</td><td colspan="2">20%</td></tr>
<tr><td>Landwirtschaftliche Unternehmen</td><td rowspan="2">20%</td><td>---</td><td colspan="3" rowspan="2">20%</td></tr>
<tr><td>Fischereibetriebe</td><td>20%</td></tr>
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Extension of and amendments to the tax credits for new investments:

a) Ordinary investments: the 6% tax credit expires

Expiry of the 6% tax credit

The tax credit of 6% (in some cases 10%) granted in recent years for investments in tangible fixed assets with a depreciation rate of more than 6,5% is history as from 1 January 2023. The transitional rule has also been left untouched: where binding orders were placed and down payments of at least 20% made by 31 December 2022, the 6% credit for investments up to a ceiling of 2 million euro may still be claimed for assets delivered by 30 June 2023. Please note: no extension of the delivery deadline has been granted here for the time being.

b) Investments in tangible fixed assets Industry 4.0: reduction takes effect

Extension and reduction of the tax credits on investments (para. 423)

As already provided for in the Budget Law for 2022, the relief in the Industry 4.0 area is substantially reduced for the years 2023, 2024 and 2025:

- 20% for investments up to 2,5 million euro,
- 10% for investments of more than 2,5 and up to ten million euro, and
- 5% for investments of more than ten and up to a maximum of 20 million euro.

Important: unlike in previous years, the above thresholds do not apply to the individual years but uniformly to the entire three-year period. Anyone who therefore already invests 20 million in 2023 will receive no further relief in the following years.

For 2023 as well, investments in the Industry 4.0 area with costs exceeding 300.000 euro require a sworn appraisal by an expert. If that investment threshold is not exceeded, a declaration by the legal representative concerning the characteristics of the assets within the meaning of the Industry 4.0 provisions is sufficient.

By contrast, anyone who placed a binding order by 31.12.2022 and also made a down payment of at least 20% continues to benefit from the previous year's reliefs for the whole of 2023. The law originally provided for 30 June 2023 as the final delivery date; this was extended to 30 September 2023 by the Budget Law, and Law Decree 198/2023 finally extended the deadline to 31 December 2023. Where the above conditions are met, the following reliefs are therefore still available for investments delivered by the end of 2023:

- 40% for investments up to 2,5 million euro;
- 20% for investments between 2,5 and 10 million euro;
- 10% for investments between 10 and 20 million euro;
- no credit for the portion exceeding 20 million euro.

For investments in the Industry 4.0 area, invoices issued in 2023 must bear a note along the following lines: "Invoice for an asset qualifying for relief within the meaning of Law 178/2020, Art. 1, paras. 1054 – 1058-ter, as amended by Law 234/2021, Art. 1, para. 44"

c) Extension for investments in intangible assets Industry 4.0

The relief for investments in intangible assets in the Industry 4.0 area remains in place until 31 December 2025 (with the usual transitional rule until 30 June 2026). The maximum amount eligible for relief is 1 million euro per year in each case, and the tax credit amounts to 20% until 31 December 2023, but is then reduced to 15% in 2024 and to 10% in 2025. Where the order was placed and a down payment of at least 20% made by 31 December 2022, the increased credit of 50% may still be claimed for deliveries up to 30 June 2023.

d) Common rules for tax credits on investments

- It should be recalled that the amount of the tax credit is not affected by the granting of other subsidies (e.g. an investment grant from the Province). All that matters is that the tax credits and subsidies taken together must not exceed the investment costs themselves.
- A condition for the granting of the above tax credits is compliance with the rules on occupational safety; in addition, the proper payment of social security contributions is required (to be evidenced, where applicable, by a DURC when claiming the tax credit!).

- The tax credit may be offset by means of form F24, whereby the relevant ceilings of 2.000.000 euro and 250.000 euro (form RU) do not apply, in three equal annual instalments. If there are no liabilities available for offsetting, an unlimited carry-forward is permitted. In the case of assets in the Industry 4.0 area, offsetting is available from the year of connection to the IT system (keyword “interconnessione”).
- Important: the credits granted under these investment incentives continue to be exempt from IRES and IRAP and also have no effect on the deductibility of overheads and interest expense.
- The existing anti-abuse provisions, by contrast, remain unchanged: the assets benefiting from the relief may not be disposed of for two years.

Repayment of the R&D tax credit

R&D tax credit (para. 271)

The deadline for the repayment (without penalties and interest) of any tax credits for research and development wrongly claimed in recent years has again been extended, for the time being to 30 November 2023. In addition, the commencement of audits by the tax authorities no longer constitutes a ground for exclusion from this remedial procedure; only the issue of an audit report containing relevant findings bars access to the facilitated repayment. This also removes any doubts as to the facilitated settlement of all those cases in which questionnaires from the Italian Revenue Agency concerning the credits have already been served in recent months.

Sabatini incentive (paras. 414 – 416)

The Sabatini incentive was already endowed with 900 million euro for the years 2022 to 2027 in the previous year. The funds are now being topped up by a further 30 million euro for 2023 and 40 million euro for each of the following years.
The relief consists of an annual interest subsidy of 2,75% (increased to 3,575 for investments in the Industry 4.0 area and in sustainable assets, “Sabatini green”). The one-off payment of the grant, by contrast, will in future only be permitted for small investments up to 200.000 euro.
In addition, for contracts concluded as from 1 January 2022, the completion deadline is extended by 6 months from 12 to 18 months.
For applications submitted from 1 January 2023, new forms and procedures must also be observed, as laid down by Circular No. 410823 of 6 December 2022.

State guarantees for SMEs (paras. 392 –

Access to the subsidised State guarantees for financing is extended to 31 December 2023, and the necessary funds are increased by 720 million euro for 2023. Just one note at this point: please bear in mind the effects of these guarantees on the ceilings for State aid and

393) on the de minimis threshold.

Sport bonus extended (para. 614) The so-called sport bonus for businesses, amounting to 65% of donations for the maintenance and construction of public sports facilities, is extended to 2023.

Sport sponsorship (para. 615) The so-called sport sponsorship relief, with a tax credit of 50% for expenditure of up to 10.000 euro by businesses, self-employed professionals and non-commercial entities, is extended to 31 March 2023.

Recycling tax credit (paras. 685-690) Businesses which in 2023 and 2024 purchase goods made from recycled materials are granted a tax credit of 36%, up to a ceiling of 20.000 euro.

2. Changes to the determination of profit

Performance bonuses to employees (para. 63) The details of this new provision should certainly be clarified with your labour consultant, and a closer look is worthwhile: performance bonuses paid to employees whose employment income did not exceed the threshold of 80.000 euro in 2022 may in 2023 be taxed at a flat rate of 5% up to a maximum amount of 3.000 euro per year; until now the substitute tax was 10%, and from 2024 the higher rate is again to apply. A condition for this relief is either a specific provision in the collective agreement or in the company-level agreement, and in South Tyrol there is in many cases still a need for action here.
<u>Note: the tax-privileged bonus could also be an instrument in the currently difficult search for staff and will certainly reduce staff turnover.</u>

Depreciation rate for retail properties (Art. 1 paras. 65-69) The depreciation rate of 3% for real estate, hitherto set in stone, is being relaxed: properties used for business purposes by businesses operating in the retail trade in consumer goods may, from 2023 and for the time being for the following 4 financial years, be depreciated at 6%; this also applies to real estate companies which let properties to the aforementioned retail businesses, although limited to affiliated companies which have jointly opted for group taxation. The relief is available to retail businesses with the following activity codes:

Ateco	Beschreibung
47.11.10	Hypermärkte
47.11.20	Supermärkte
47.11.30	Nahrungsmitteldiscounter
47.11.40	Minimärkte u. a. kleine Lebensmittelgeschäfte mit Waren versch. Art.

47.11.50	Einzelhandel mit Tiefkühlwaren
47.19.10	Kaufhäuser
47.19.20	Einzelhandel in nicht spezialisierten Betrieben mit Datenverarbeitungsgeräten, peripheren Geräten, Kommunikationstechnik, Unterhaltungselektronik (Audio und
47.19.90	Andere nicht spezialisierte Geschäfte mit verschiedenen Waren (nicht Nahrungsmittel)
47.21	Einzelhandel mit Obst und Gemüse in spezialisierten Betrieben
47.22	Einzelhandel mit Fleisch und Fleischwaren in spezialisierten Betrieben, Einzelhandel mit Fisch, Krusten- und Weichtieren in spezialisierten Betrieben
47.23	Einzelhandel mit Fisch, Krusten- und Weichtieren in spezialisierten Betrieben
47.24	Einzelhandel mit Brot, Kuchen, Süßwaren und Confiserie in spezialisierten Betrieben
47.25	Einzelhandel mit Getränken
47.26	Einzelhandel mit Monopolwaren (Tabaktrafiken)
47.29	Einzelhandel mit sonstigen Nahrungsmitteln

The relief is to apply, for the time being, for the years 2023 to 2027, and the details must be governed by a separate implementing provision within 60 days.

New flat tax (Art. 1, paras. 55-57)

As a reminder: during the heated election campaign last summer, the introduction of a general flat tax for entrepreneurs and self-employed professionals had been promised. This promise is being implemented only very timidly: limited to 2023, individuals may accordingly settle income from business or professional activity by way of a proportional tax of 15%, but

- only for that part of the profit or surplus which exceeds the highest profit or surplus of the preceding three-year period (i.e. the years 2020, 2021 and 2022), reduced by 5%, and
- a maximum of 40.000 euro may be subject to the substitute tax. If the increase in the result is higher, the difference must obviously again be taxed progressively.

According to an initial analysis, the special taxation will not be applicable to income from partnerships and professional associations.

The effects of this reform are likely to be very modest, and the legislator evidently does not assume any extension beyond 2023 either, since the advance payments for 2024 must already again be calculated without taking this settlement tax into account.

Threshold for simplified bookkeeping raised (paras. 55-57)

The threshold up to which businesses may keep so-called simplified accounts is raised with effect from 2023, namely

- from the previous 400.000 euro to 500.000 euro for service businesses and
- from the previous 700.000 euro to 800.000 euro for other businesses.

Individuals and partnerships which did not exceed the above thresholds in 2022 will in principle fall under simplified bookkeeping in 2023.

Changes to the flat-rate scheme (para. 54)

The flat-rate scheme in force for entrepreneurs and self-employed professionals undergoes two changes:

- First, the general access threshold for revenues is raised from the previous 65.000 euro to 85.000 euro as from 2023; anyone who, for example, generated revenues of 80.000 euro in 2022 may therefore still claim the flat-rate scheme in 2023.
- Much more important, however, is the next change: anyone exceeding the revenue threshold of 100.000 euro in a given year can no longer claim flat-rate taxation already in the current year. Where the limit of 85.000 euro is exceeded but the threshold of 100.000 euro is not reached, exclusion takes effect, as before, only from the following year. For VAT purposes, invoicing with VAT shown is required as from the transaction with which the limit of 100.000 euro is exceeded.

The change puts an end to a hitherto widespread legal tax avoidance practice under which, in extreme cases, even turnover in the millions could still be taxed on a flat-rate basis in the current year and only triggered exclusion from the flat-rate scheme as from the following year. In the following year, turnover of less than 65.000 euro was then declared, so that the taxpayer was again subject to the flat-rate scheme for the next year. This tax hopping has now come to an end!

Expenses from tax havens (Art. 1 paras. 84 – 86)

For expenses from tax havens, the monitoring procedure in the tax return previously provided for under Art. 110 of the Income Tax Code (TUIR) is reintroduced. If the disclosure is omitted, the expenses are not deductible for tax purposes. For these purposes, however, only those jurisdictions classified as non-cooperative by the EU Commission (list of 4 October 2022) qualify as tax havens. These are only twelve, essentially exotic island states, so that the practical effects of this provision should be marginal.

Correction of accounting errors (Art. 1 paras. 273-275)

As a reminder: the so-called Simplification Decree (Law Decree No. 73/2022) provided in June 2022 for corporations the possibility of recognising for tax purposes any accounting errors – in particular as regards the allocation to the correct accounting period – in the year in which they were corrected in the accounts and reflected accordingly in the financial statements. This concerns only those corporations which apply the principle of enhanced derivation ("derivazione rafforzata").

Until now, these companies did not have to file a supplementary return in order to correct such errors for tax purposes, and recognition in the year of the correction was sufficient.

This simplification is now partly withdrawn and applies only to those corporations which are subject to a statutory audit. The legislator's aim was in fact to find a pragmatic solution for the prompt preparation of the annual financial statements customary at large companies and for the resulting errors in period-end accruals and deferrals. The withdrawal is intended to prevent possible abuse, at least at smaller companies, through the shifting of costs and income.

<u>Important: the restriction applies retroactively for the 2022 tax period and will as a rule again require a more precise allocation of expenses and income to the correct accounting period!</u>

Suspension of depreciation under commercial law

Art. 3 of the deferral decree referred to at the outset provides that, in the annual financial statements for 2022 and 2023 as well, it will be possible to suspend depreciation under commercial law (so as, where necessary, not to jeopardise the book net equity) and nevertheless to deduct that depreciation for tax purposes.

Grace period for losses

Art. 3 para. 9 of the aforementioned deferral decree also provides that the rule under which any losses shown in the financial statements need not lead immediately to a capital reduction within the meaning of Art. 2446 of the Civil Code, to a replenishment of the share capital within the meaning of Art. 2447 of the Civil Code or to the conversion or dissolution of the company still applies to the annual financial statements as at 31 December 2022, but that – as in the last two years – a transitional period of 5 years is granted within which these losses may be covered. At the latest upon approval of the annual financial statements as at 31 December 2027, however, the moment of truth will come.

3. <u>Privatisations and assignments</u>

Privatisation of company assets or conversion into a simple partnership (paras. 100-105)

The next measure is likely to be of greater interest: after 7 years, it is again possible for partnerships and corporations to assign to their shareholders, or to sell to them, real estate not used for business purposes and vehicles registered in public registers under favourable tax conditions, or for such companies to be converted into simple partnerships on favourable terms. The assignment or the sale is possible to those shareholders who were registered as such as at 30 September 2022. A conversion is possible where the object of the company was predominantly or exclusively the management of the assets to be privatised.

Only real estate and vehicles not used for business purposes may be privatised. The transfer or the conversion must take place by 30 September 2023.

<u>The relief: the tax benefit consists in the application of a substitute tax on any capital gains and in the halving of the registration tax, while the mortgage and cadastral taxes apply at a fixed amount. The substitute tax on the latent capital gains amounts to 8%, increased to 10,5% if the company was not operating in 2 of the last 3 years. The capital gains are determined as the difference between the tax-recognised cost and the assignment value. In the case of real estate, the cadastral value may be used instead of the market value.</u>

Profit reserves under tax suspension released as a result of the assignment (e.g. revaluation reserves not released) at corporations are settled by a substitute tax of 11%.

<u>There is no relief for value added tax purposes; it must be calculated under the general rules.</u>

In so far as profit reserves are released for the assignment to the shareholders, these constitute dividend distributions for shareholders of corporations, namely for that part of the value which is not covered by the substitute tax.

In general terms it can be said that an assignment of business assets to the shareholders is attractive where those assets are not to be sold by the shareholders in the medium term. If an immediate resale to third parties is envisaged, the advantage is greatly reduced by the VAT charged on the privatisation and by the subsequent transfer subject to registration tax. More attractive, by contrast, is the conversion of the holding trading company into a simple partnership, because in that case no transfer taxes apply and, in addition, the holding period of the converted company is included when calculating the speculative period.

<u>Recommendation: should you be interested in this arrangement, we ask you to contact our office immediately, not least because the substantive requirements have to be verified as at 1 January 2023 and corrections may still be possible here.</u>

The assignments to the shareholders are treated as self-supply and must consequently also be taken into account for VAT purposes. As a rule, this results in a taxable transaction which is subject to VAT in the normal way. In many cases, however, the transaction

concerned is VAT-exempt (e.g. in the case of dwellings). Where input VAT was not deducted on acquisition, the transaction is outside the scope of VAT.
For transfers subject to proportional registration tax (because, for example, no VAT is due), this tax is reduced by half (4,5 instead of nine percent). The mortgage and cadastral taxes are applied at a fixed amount.

Privatisation of business assets of sole proprietorships (para. 106)

Sole proprietorships, by contrast, may privatise (only) properties used for business purposes (e.g. a workshop building) which they held as at the reference date of 31 October 2022; here the substantive access requirement is thus exactly the reverse of that applying to trading companies.
The privatisation takes legal effect as of 1 January 2023. The substitute tax likewise amounts to 8%, to be calculated on the difference between the cadastral value and the tax-recognised value.
The deadline for the privatisation described is 31 May 2023.
The privatisation or withdrawal constitutes a taxable transaction for VAT purposes (Art. 2 para. 2 no. 5 of the VAT Act), but only if the acquisition was also taxable. Excluded are therefore acquisitions made from a private individual, or those taken over by the sole trader from his private sphere, or those carried out at a time when VAT did not yet exist (acquisitions before 1973).

4. Other changes for businesses and self-employed professionals:

Solidarity contribution in the energy sector (paras. 115 – 121)

Solidarity levy in the energy sector: as a reminder: by Art. 55 of Law Decree 50/2022, a special tax of 25% was introduced last year for businesses active in the production, import, distribution or sale of electricity, natural gas and petroleum products, levied on the positive differences in turnover for the period 1 October 2021 – 30 April 2022 compared with the reference period 2020/2021. In this respect, regard was had solely to the positive difference between the output and input transactions in the respective periodic VAT returns for the reference period and – in so far as the difference amounted to at least 5 million euro and there was an increase of at least 10% – a special tax of 25% was applied to that margin. The special tax had to be paid by 30 June 2022 (40%) and 30 November 2022 (60%).
The measure was heavily criticised, and countless disputes are already pending, in particular because an income tax is calculated on the basis of changes in output and input VAT transactions.
The levy is now being slightly amended retroactively for 2022 and completely re-regulated

for 2023.

Changes with retroactive effect for 2022:

For 2022, the subjective scope is first of all narrowed: only those businesses are affected which in calendar year 2021 generated at least 75% of their VAT turnover from the aforementioned activities in the energy sector.

The method of calculation based on VAT turnover is however retained, albeit with the restriction that the following transactions are retroactively no longer to be taken into account:

- purchases and sales of shares, bonds and other securities which do not represent goods or shareholdings;
- output transactions which are not taxable in Italy for lack of the territorial requirements.

Anyone who, following a recalculation on the basis of these parameters, has paid too much or too little windfall profits tax with the two payments in June and November may either file a refund claim or make an additional payment by 31 March 2023.

Incidentally, the Council of State will rule on the appeals against the levy on 7 February 2023, and it will be interesting to see whether the link to VAT turnover will stand.

Changes for 2023:

For 2023, by contrast, the subjective scope is likewise restricted to those businesses which, in the financial year preceding 1 January 2023 (as a rule therefore in 2022), generated at least 75% of their revenues (note: no longer VAT turnover!) from the aforementioned activities in the energy sector. Expressly excluded are, in addition, businesses which merely operate platforms for the organisation and exchange of energy and certificates, as well as micro-enterprises engaged in the retail sale of fuel (activity code 473000).

For the calculation of the tax, by contrast, reference is now made to the profit as determined for IRES purposes. The special tax itself is calculated by applying a rate of 50% to the excess profit of the financial year preceding 1 January 2023 (as a rule therefore 2022) compared with the average profit of the four preceding financial years, provided that this excess profit amounts to at least 10%. And the excess profit may not exceed 25% of the company's net equity as shown in the last annual financial statements preceding 1 January 2022 (as a rule therefore as at 31 December 2021). The tax is due within the 6th month following the end of the financial year, as a rule therefore by 30 June 2023.

For both years it continues to apply that the special tax is not deductible for IRES and IRAP purposes.

According to the wording of the law, it would appear that only corporations, with the exception of micro-enterprises, are affected, and that the above threshold of 5 million euro no longer applies. As shown, the levy is payable in 2023 by reference to the result for

2022. Double charges in relation to the old levy are therefore not excluded, nor are overlaps with the skimming-off of excess profits by the GSE described below.

Skimming-off of other excess profits (paras. 30 – 38)

Skimming-off of energy production: as a reminder: by Art. 15-bis of Law Decree No. 4/2022 (ratified by Conversion Law No. 25/2022), a rule was introduced last year under which, in the case of installations (above all photovoltaic, wind power and hydropower plants) with a capacity of more than 20 kW, the excess profits in the period between 1 February 2022 and 31 December 2022 were skimmed off by the GSE under an extremely controversial procedure, namely to the extent that a fixed reference price (58 euro per MWh in South Tyrol) was exceeded.

A new skimming-off tax is now introduced for the period from 1 December 2022 to 30 June 2023, whereby the excess profit is calculated by reference to the cap of 180 euro/MWh set by the EU.

The GSE authority is instructed to lay down the necessary implementing provisions for the recovery.

In any event, installations with a capacity of up to 20 kW continue to be excluded in the future as well.

We will inform you immediately once the implementing provisions are issued.

Remission for formal errors (paras. 166 – 173)

Once again, a so-called remission for formal errors is being introduced: a remission is again provided for formal errors committed up to 31 October 2022. These are errors which have no effect on the amount of the tax due. The flat-rate settlement fee amounts to 200 euro per year and must be paid in two instalments by 31 March 2023 and 31 March 2024. The errors or omissions must, however, be corrected or remedied. Infringements already definitively assessed as at 1 January 2023 are excluded from the remedy.

In order to increase the incentive of this remission somewhat, the deadline for the service of the corresponding assessment notices by the tax authorities was at the same time extended by 2 years for infringements committed up to 31 October 2022 and established by way of an audit report.

The Italian Revenue Agency has been instructed to issue the necessary implementing provisions (in particular the application form and the payment codes). We will inform you immediately once the forms and instructions are available.

Non-resident real estate companies (paras. 96-99)

Capital gains from the sale of shareholdings in companies resident in Italy by shareholders not resident here are in principle not taxable in Italy. This is now to be changed in all cases where the companies concerned are real estate companies and the capital gain is predominantly attributable to properties located in Italy. To this end, Art. 23 of the Income Tax Code (TUIR) is supplemented by para. 1-bis. The look-through taxation does not apply to so-called OICR and also does not apply to properties whose construction and sale were the object of the business or which were used directly for the pursuit of a commercial activity.

Investment Management Exemption (Art. 1 para. 225)

A number of clarifications are made for fund and investment companies resident abroad, with clear guidelines on the substantive and subjective conditions under which such investors do or do not create a permanent establishment in Italy.
If you require further information on this point, please contact our office.

Plastic tax (para. 64) and sugar tax

The introduction of the so-called "plastic tax" and "sugar tax" is postponed by a further year.

Tips (Art. 1 paras. 58 – 62)

The following change primarily concerns employees, although its practical handling is a matter for the commercial employer. Hence the following notes at this point: a substitute tax of 5% is introduced for tips granted to employees in the hotel and catering sector by customers, including by electronic means of payment. The tax must be withheld by the employer. The substitute tax applies only to employees with an income of up to 50.000 euro and up to a maximum of 25% of the annual employment income. Tips taxed in this way by substitute tax are disregarded for the purposes of INPS and INAIL contributions and for the calculation of severance pay. Conversely, they must be taken into account when calculating tax deductions and any form of support, including of a non-tax nature (in our view, therefore, in particular subsidies).

Covid aid and ceilings (paras. 595 – 602)

Tourism businesses which received Covid aid exceeding the thresholds applicable from time to time (initially 800.000 euro, then 1,8 million euro and finally 2,3 million euro) may repay it without penalties; alternatively, they may also opt for an offset against future aid. In principle, no penalties apply.
The details have to be issued by a separate implementing decree, and it is only to be hoped that this will be published before the filing deadline for the Covid aid itself, which was

most recently extended to 31 January 2023.

Settlement of dividends from tax havens (paras. 87 – 95)

Dividends from companies established in tax havens are normally taxed in full. It is now provided that these may be settled by a substitute tax of 9% in the case of corporations and 30% in the case of individuals. If the dividends are distributed to Italy within the deadline for the 2023 tax payment (as a rule therefore by 30 June 2024), the substitute tax is reduced to 6% and 27% respectively. The relief concerns companies and also individuals, the latter, however, only on condition that they hold the shareholding through a business.
The tax-recognised cost of the foreign shareholding in the tax haven is reduced by the dividends distributed and increased by the substitute tax.

We remain at your disposal for any further information.

Yours sincerely
Josef Vieider