Comploj Vieider Lorenzon
Lechner Zanellato

PDC Partner
Wirtschaftsprüfer und Steuerberater
Dottori Commercialisti

Senior partner
Dott. Lodovico Comploj
Dott. Emilio Lorenzon
Dott. Josef Vieider
Dott. Alessandro Zanellat
Dott. Martin Lechner

Wirtschaftsprüfer und Steuerberater / Dottori
Dott.ssa Elena Gattolin
Dott.ssa Sabrina Tabiador
Dott.ssa Monika Mattivi
Dott. Nicola Sartori
Dott. Thomas Pichler
Dott. Samuel Vittur
Dott. Christian Gentilini
Dott. Stefan Lanznaster
Dott.ssa Martina Santin
Dott.ssa Serena Giacomo
Dott. Lorenz Bonadio
Dott.ssa Giulia Fortin

Bilanzbuchhalter / Esper
Dott. Antonio Gocev

To all
clients

Circular No. 03/2024

Bolzano, 12 January 2024

Subject: Changes 2024 for businesses and self-employed professionals

The Budget Law for 2024 was adopted by Law No. 213 of 30 December 2023 and published on the same day in Official Gazette No. 303. It has been in force since 1 January 2024. Unlike in previous years, the changes it contains can almost be counted on the fingers of one hand. This does not mean, however, that a vast number of changes did not nevertheless become legally effective at the end of the year, because at the same time the following are entering into force these days: the changes under the so-called accompanying decree (Law Decree 145/2023), the changes under the decree for the „rescue of the Superbonus“ (Law Decree 212/2023), the New Year’s Eve decree (the so-called „Milleproroghe“, Law Decree 215/2023) and a series of implementing decrees relating to last year’s tax reform, namely the internationalisation decree (Legislative Decree No. 209/2023), the first decree amending the income taxation of individuals (Legislative Decree No. 216/2023), the decree amending the Taxpayer’s Charter (Legislative Decree No. 219/2023), the decree amending tax jurisdiction (Legislative Decree No. 220/2023) and the decree on cooperation with the tax authorities (Legislative Decree No. 221/2023), and lastly the so-called simplification decree (Legislative Decree No. 1/2024) – and for the taxpayer it ultimately makes no difference where the new rules originate from.

GGi A GLOBAL ALLIANCE OF INDEPENDENT PROFESSIONAL FIRMS

39100 Bozen, via F.Crispi / F.-Crispi-Straße 9
tel +39 0471 288333, fax +39 0471 272521
e-mail info@pdc-partner.it

20121 Milano / Mailand
Foro Buonaparte 70
tel +39 02 36687469

39036 Stern / La Villa di Badia
Str. Ninz 63
tel +39 0471 847360

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 for real estate and construction, the changes in the field of VAT as well as other changes and in particular the internationalisation decree.

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

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

Extension and reduction of the tax credits on investments

Investments in tangible fixed assets Industry 4.0: reduction takes effect

As already provided for in the Budget Law for 2023, the incentive 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 the past, the above thresholds do not apply to the individual years but uniformly to the entire three-year period 2023 - 2025. Anyone who has therefore already invested 20 million in 2023 will no longer receive any incentive in the following years.

For 2024 as well, investments in the Industry 4.0 area with costs exceeding 300.000 euro require the sworn appraisal of 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.

Contrary to various reports at the end of the year, the New Year’s Eve decree did not grant any extension for late deliveries. At the end of the year there were numerous reports according to which the deadline of 30 November 2023 for the delivery of assets booked in 2022 was to be postponed to 30 June 2024. Please note that this extension of the deadline has not been implemented!

As a reminder: for these investments the note on the tax relief (reference to paras. 1051 – 1063 of Art. 1 of Law 178/2020) must always be shown on the invoices (where appropriate also by means of a stamp), and in this respect the Italian Revenue Agency, after some contradictory statements, clarified in its ruling of 10 January 2024 that at least on the delivery notes the said reference to the law is not necessary, provided that the identifying data of those delivery notes are shown on the invoice.

Investments in intangible assets Industry 4.0

The incentive for investments in intangible assets in the Industry 4.0 area remains in place for the year 2024; as is known, it still applies until 31 December 2025 (with the usual transitional rule until 30 June 2026). The maximum amount eligible for the incentive is 1 million euro per year in each case, and the tax credit amounts to 15% in 2024 and will be reduced to 10% in 2025.

Repayment of the R&D tax credit

R&D tax bonus (Law Decree 145/2023)

The deadline for the repayment (without penalties and interest) of any R&D tax credits unduly claimed in recent years is once again extended, for the time being to 30 July 2024. In addition, the commencement of audits by the tax authorities no longer constitutes a ground for exclusion from this settlement; only the issue of an audit report containing relevant objections bars access to the facilitated repayment. This also removes any doubts about 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. The following rule is also of interest: anyone who has already filed an application for settlement under the previous provisions but has not yet made the payment may withdraw the old application by 30 June 2024 and rely on the new settlement procedure.
Unless a further extension is granted, we will inform you in good time of the necessary steps.

Sabatini incentive (Art. 1 para. 256 Budget Law)

The deadline for the completion of assets for which financing was applied for between 1 January 2022 and 31 December 2023 is extended by 6 months to a total of 18 months.
In addition, the incentives for new investments under the Sabatini-ter Law are refinanced for 2024.

Abolition of the ACE (Art. 5 Legislative Decree 216)

The equity incentive for businesses in the form of a notional interest deduction is abolished, with effect for the tax period beginning after 31 December 2023. It should be highlighted positively that surpluses from previous years may be carried forward and used without any time limit. In the annual financial statements for 2023 the ACE may still be calculated; the notional return on equity, however, amounts to a modest 1,3% p.a.!

Release of the Super-ACE

But here too some good news: from 1 January 2024 the lock-up period of 3 years expires for those businesses which claimed the then Super-ACE of 15% for increases in net equity in the annual financial statements for 2020 (always assuming a financial year coinciding with the calendar year). That relief required in particular that such increases not be distributed for at least 3 years, failing which it would lapse. This lock-up period has now expired, so that distributions are again permitted from 1 January 2024.

Tax credit for transport operators (Art. 1 paras. 296-297 Budget Law)

Transport businesses entered in the register of hauliers carrying goods on behalf of third parties with vehicles having a load capacity of 7,5 t or more are retroactively granted, also for the month of July 2022, a tax credit of a maximum of 12% of fuel costs, namely for vehicles from emission class Euro 5 upwards. Until now the incentive had been limited to the period up to 30 June 2022.

New de minimis rules (EU Reg. 2831 and 2832/2023)

For the period 1 January 2024 to 31 December 2030 the threshold for so-called de minimis aid is newly regulated: the previous ceiling of 200.000 euro is raised to 300.000 euro over a three-year period. In addition, the rules on the calculation of the period are amended: until now the observation period was the current and the 2 preceding calendar years. The new wording suggests that this is a rolling deadline, so that on each grant of aid the relevant date and the preceding three-year period (e.g. 5 January 2024 – 5 January 2021) must be taken into account.
Transport vehicles now also fall under the de minimis rules, so that the States also have the possibility of extending the incentives to goods transport.

Failure to report tax credits in the tax return does not lead to forfeiture (Art. 13 Legislative Decree 1/2024)

This new rule should take a weight off many people’s minds: the correct reporting of the various tax credits in the annual tax return has recently driven many to despair, not least because the instructions on the correct allocation of the benefits to the individual periods were anything but clear. It is now clarified that failure to report them in the tax return may at least not lead to forfeiture of the credits, provided the remaining conditions for entitlement are met.
Penalised are all those who have already had to make repayments as a result of incorrect reporting. They cannot apply for a refund.
According to the information available so far, it is already no longer necessary for 2023 to state all tax credits in form RU.

Disposal of revalued fixed assets

Anyone who revalued fixed assets in the annual financial statements as at 31 December 2020 may, since 1 January 2024, dispose of them taking the revaluation into account. As a reminder: in the case of any disposal of revalued assets within the lock-up period of 3 years, the revaluation would have been forfeited. Now, by contrast, any capital gains are determined only on the difference between the sale proceeds and the revalued cost.

Tax credit for the film industry (Art. 1 para. 54 Budget Law)

The existing tax credits for the film business are being fundamentally revised. Should this affect you, please contact our office for further details.

2. Changes in the determination of profit

Adjustment of inventories (Art. 1 paras. 78-85 Budget Law)

As already communicated in Circular No. 51/2023, after around 20 years the possibility has once again been introduced of adjusting the opening inventories against payment of a substitute tax: businesses which apply the national OIC accounting standards (conversely, those preparing their financial statements under IFRS are excluded!) may, irrespective of their legal form (sole proprietorships, partnerships and corporations), adjust for the financial year current as at 30 September 2023 the opening inventories pursuant to Art. 92 of the Income Tax Code (TUIR) at the beginning of the financial year (as a rule therefore as at 01.01.2023). Opening inventories of raw materials, auxiliary and operating materials, semi-finished goods, finished goods and merchandise may be adjusted. Conversely, according to the wording of the law (and to this effect also the former Circular No. 115/2000), it must be assumed that opening inventories of work in progress and services cannot be adjusted.

Both the elimination of overstated opening inventories and the recording of additional inventories at the beginning of the financial year are possible, whereby in detail, in the case of a reduction, both quantitative reductions and mere write-downs are permitted, while in the case of increases (at least according to the interpretation in Circular No. 115/2000) only quantitative increases are permitted and not also mere revaluations of the opening inventories without any quantitative change in the stock.

A substitute tax for IRPEF, IRES and IRAP of 18% is due on the difference. Where closing inventories are eliminated, an undeclared sale is generally assumed, and accordingly it is required that VAT at the average rates of the 2023 financial year additionally be paid on the difference; this VAT must moreover be adjusted by an uplift factor, the amount of which is to be set by a separate decree.

<u>In the case of increases for inventories „forgotten“ in the past, the correction can lead to considerable tax savings; reductions will only make sense in special cases!</u>

The substitute tax and the VAT (in the case of reductions) are to be paid in two instalments within the deadlines for the tax payment for 2023 and within the deadline for

the second advance payment for 2024.
The corrections thus made are recognised for both commercial law and tax law purposes and may not lead to any penalties, except where relevant audit reports were already in place when the 2024 Budget Law entered into force. It should be added that the substitute tax is of course not deductible for income tax purposes.
<u>It must be noted critically that the measure is identical to the one of the year 2000; in the meantime, however, the provisions on the liability of the board of directors and the board of statutory auditors have changed fundamentally, and it will be necessary to see how the doctrine receives the new rule in the coming months.</u>

Capital gains of non-resident companies (Art. 1 para. 59 Budget Law)

Corporations resident in the EU or the EEA without a permanent establishment in Italy which realise capital gains from shareholdings in Italy and which must also tax them here under the relevant double taxation treaty are entitled to the so-called PEX regime (taxation of only 5% of the gain), provided the relevant requirements applicable to Italian companies are met. The amendment to the law takes account of a recent judgment of the Court of Cassation (No. 21261/2023). A substitute tax of 26% applies to the capital gains thus reduced.
It is interesting that non-resident corporations may offset any capital losses to the extent of 5%, whereas for resident corporations, as is known, such losses are 100% non-deductible.

Cooperative compliance (Legislative Decree 221/2023)

In line with the OECD's recommendations, tax audits should take place as promptly as possible and not only after the event. The „Cooperative Compliance“ procedure, i.e. accompanying control, which currently applies only to large enterprises with revenues exceeding 750 million euro, is to be gradually extended by 2028 to businesses with revenues of up to 100 million euro. To this end, the establishment of an internal tax control system (ICS or TCF – tax control framework) is now provided for. This must be reviewed and certified by an auditor, a tax adviser or another qualified person. It allows the limitation periods to be shortened and administrative penalties to be reduced. We will keep you informed of further developments in due course!

OIC No. 34

As already communicated, the provisions of OIC No. 34 on the correct recognition of revenue take effect on 1 January 2024. We refer to our circular on this topic.

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

Sugar tax and plastic tax (Art. 1 para. 44 Budget Law)

The two taxes introduced by the 2020 Budget Law and postponed time and again are postponed once more, but owing to the scarce financial resources initially only until 1 July 2024.

Offsetting of social security contributions (Art. 1 paras. 94-97 Budget Law)

From 1 July 2024, credits from social security contributions (INPS and INAIL) may likewise be offset via payment form F24 only through the platform of the Italian Revenue Agency. The credit may only be used from the tenth day after submission of the return from which the credit arises.

F24: prohibition of offsetting where tax assessments exceed 100.000 euro (Art. 1 para. 94 Budget Law)

Where overdue payment notices from tax assessments total more than 100.000 euro, the offsetting of tax credits via payment form F24 is prohibited entirely. The restriction applies from 1 July 2024. The prohibition does not apply where a suspension of payment has been granted in the course of tax litigation proceedings. However, under the current wording, any admission to payment by instalments, where appropriate even with correct payment of the 1st instalment, would be a ground for the prohibition of offsetting where the overdue amount exceeds 100.000 euro. It is to be hoped that an amendment will still be issued before July.

Please note: a rule already applied previously under which offsetting was excluded in the case of overdue payment notices of more than 1.500 euro; that prohibition of offsetting is, however, limited to the amount of the payment notice. If, for example, an overdue notice of 10.000 euro exists but the credit amounts to 100.000 euro, then 90.000 euro may be offset, where necessary with the required certification by an auditor. The new rule, by contrast, provides for an absolute prohibition of offsetting once the threshold of 100.000 euro is exceeded. And importantly: the „old“ rule has not been abolished but continues to apply, though only up to 100.000 euro.

According to a literal interpretation of the new provision, tax credits from renovation works in the construction sector are also affected by the prohibition of offsetting.

Compulsory insurance against damage from natural events (Art. 1 paras. 101 – 111 Budget Law)

All businesses with their registered office or a permanent establishment in Italy are obliged to take out, by 31 December 2024 at the latest, insurance covering damage to land, buildings and tangible fixed assets which may be caused directly by natural disasters (floods, earthquakes, landslides). The deductible may not exceed 15% of the loss. Failure to comply may result in reductions in grants and support in the event of a disaster.

Administrative penalties of between 100.000 euro and 500.000 euro may be imposed on insurance companies which refuse to provide such insurance.

Board of statutory auditors

On 1 January 2024 new control rules take effect for boards of statutory auditors in joint-stock companies, limited liability companies and cooperatives. The new rules concern in particular the so-called plenary shareholders' meeting, the area of „whistleblowing" and situations of corporate crisis.

Withholding tax for insurance agents (paras. 89–90 Art. 1 Budget Law)

As is known, the commissions paid by insurance companies to their agents have hitherto been exempt from withholding tax. For payments made from 1 April 2024 this exemption ceases to apply. Future payments are subject, under the general rules for commissions, to a creditable withholding tax of 23% on 50% of the commissions, reduced to 20% of the commissions if the insurance agent notifies its principal that it makes continuous use of the collaboration of employees or third parties.

Changes for withholding agents (Legislative Decree No. 1/2024)

There are interesting simplifications for withholding agents, although with delayed effect. From 2025, CU certificates will no longer have to be issued to taxpayers who have opted for the flat-rate scheme. The obligation was never entirely comprehensible anyway, since no withholding tax is applied in such cases. But caution: by 16 March 2024 these certificates must still be prepared for 2023.
In addition, in the course of a pilot procedure for smaller businesses (up to 5 employees), it is to be tested whether payments via form F24, together with additional reporting, could replace the 770 return. As soon as the necessary implementing provisions have been issued, we will inform you on this point.

We remain at your disposal for any further information.

Yours sincerely

Josef Vieider