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To all
clients

Circular
No. 23/2023

Bolzano, 7 April 2023

Subject: Restrictions on the assignment of tax credits and on invoice discounts in the construction sector – emergency decree converted into law

Things are never as bad as they first seem. In this sense, Law Decree No. 11 of 16 February 2023, which was converted into law by Parliament in recent days, has also undergone numerous amendments, and the original restrictions on the assignment of tax credits and on the granting of discounts on the invoice for various recovery works have been appreciably relaxed. Here is the new legal position following the conversion of Law Decree No. 11/2023:

1. Restrictions on the assignment and on the discount on the invoice („sconto in fattura“):
As a reminder: pursuant to Law Decree No. 11/2023, since 17 February 2023 it has no longer been possible, in respect of the construction measures listed below, to assign the tax credits available to third parties (irrespective of whether these are banks or businesses) or to obtain a corresponding discount on the invoice from the construction firms:
- general recovery works on residential buildings (50% with an expenditure cap of 96.000 euro);
- energy-efficiency refurbishments (50% or 65% with differentiated caps);
- measures for the removal of architectural barriers (75%);
- façade bonus,
- installation of photovoltaic systems,

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- installation of electric charging stations,
- improvement of earthquake safety and
- Superbonus (110% or 90%).

However: the exceptions determine the rule, and accordingly the transitional provisions and exemption rules have been largely redesigned. In detail, for the works listed below the assignment or the discount on the invoice continues to be permissible under the „old“ rules:
- works for the removal of architectural barriers (tax credit 75%);
- works on buildings in the earthquake zones of classes 1, 2 and 3 which give entitlement to the Superbonus of 110%, in so far as detailed recovery plans approved as at 17 February 2023 are available (for the details, official guidance will have to be awaited here);
- construction works for which no building permit is required but for which binding contracts with suppliers for the supply of goods or for the performance of construction works had already been concluded before 17 February 2023. In so far as no advance payments were made before that date, a self-declaration by the client and the contractor confirming that the relevant conditions were met as at 17 February 2023 must be drawn up;
- for the purchase of recovered building units from construction companies (tax deduction amounting to 25% of the purchase price with a cap of 48.000 euro), of newly built ancillary parking spaces (tax deduction of 50% of the construction costs) or of building units constructed to earthquake-safe standards (the so-called „sismabonus-acquisti“) in the earthquake zones of classes 1, 2 and 3, the conclusion of a registered preliminary purchase agreement before 17 February 2023 is no longer required; what is required instead is that the application for the issue of the necessary building permit was filed before 17 February 2023;
- WOBI and similar bodies (IACP, ATER, etc.), housing cooperatives with undivided ownership and ONUS organisations, voluntary organisations and associations of a social nature remain admitted to the assignment or the discount on the invoice without particular restrictions, in so far as these organisations were already in existence as at 17 February 2023;
- construction measures on properties which were damaged by earthquakes after 1 April 2009 in municipalities for which a state of emergency was declared, as well as on properties affected by the storms in the Marche region after 15 September 2022.

Finally, the exemptions already provided for in the Law Decree of 17 February 2023 remain in place, namely those for works giving entitlement to the Superbonus (90% or 110%), that is to say:
- in so far as they do not concern condominiums, if the notice of commencement of works (CILA) was submitted before 17 February 2023,

- in so far as they concern condominiums, if the condominium meeting resolved upon the works before 17 February 2023,
- for works having as their object the demolition and reconstruction of buildings, if the application for the building permit was filed before 17 February 2023.

Other subsidised construction measures (tax deduction 50% or 65%), on the other hand, remain exempt from the new restrictions, provided that before 17 February 2023
- the application for the issue of the building permit, where required, was filed with the competent municipality, or
- where no building permit is necessary, the works had actually commenced.

2. Extension of the offsetting period:

As a reminder: the tax deductions of 50% and 65% must be offset over 10 years, and those in connection with the so-called Superbonus, earthquake bonus and barrier bonus over 4 or 5 years. The restrictions most recently imposed on the sale of tax credits place many taxpayers in the awkward position of not having sufficient tax liabilities at all to carry out the offsetting. The possibility is now created of spreading all deductions over 10 years. The corresponding option must be exercised in the tax return for 2023, is irrevocable and presupposes that a first „shortened“ instalment has not already been deducted in the tax return for 2022.

3. Regularisation of the assignment of credits

Taxpayers who no longer correctly assigned credits for the year 2022, or also the instalments from the years 2020 and 2021, to a bank or insurance company (other third parties are excluded) by 31 March 2023 (quite frankly: the turmoil and uncertainty of recent weeks made a correct assignment virtually impossible!) may regularise this by 30 November 2023. The rectification has to be paid for by a one-off settlement payment of 250 euro.

4. Other clarifications

- It is clarified that the SOA registration of the contracting undertakings is necessary only where an individual works contract exceeds the threshold of 516.000 euro (and not the construction measure as a whole);
- in so far as the construction measures concerned do not give entitlement to the Superbonus (110% or 90%), it is not necessary, although optionally permissible, to invoice separate stages of the works in order to claim the tax deductions;
- certifications of conformity for the Superbonus and the earthquake bonus may be regularised within the deadline for the tax return or within the deadline for notifying any assignment of the

tax credit to third parties.

5. Extension of the deadline for single-family houses

Owners of single-family houses or of independent dwellings in multi-family houses who already commenced works in the previous year which still give entitlement to the tax deduction of 110% and who had carried out at least 30% of those works as at the reference date of 30 September 2022 are granted until 30 September 2023 to complete them. Originally, only a deadline until 31 March had been provided for here.

6. Prohibition on sales to public administrations

Since 17 February 2023, public administrations (e.g. the Province or the municipalities) have been prohibited from purchasing tax credits arising from the refurbishments referred to above.

7. Government bonds and the tax credit

In order to ease the current blockage at the banks with regard to the purchase of tax credits, a specific rule has been introduced under which banks and insurance companies may convert such tax credits into government bonds.

8. Joint and several liability on assignment

Law Decree No. 11/2023 had already expressly excluded the joint and several liability of the purchaser of the tax credit, and also of the party granting the discount, where these are in possession of the documents listed below (always on the assumption that these documents are required at all). In the course of the conversion of that law decree a number of amendments were made here, and joint and several liability is now excluded where the following documents are available:

- building permit or, in the case of works not requiring a building permit, a corresponding substitute declaration
- notification of the commencement of works to the health authority (or, in South Tyrol, to the Office for Occupational Safety) or a substitute declaration that such notification is not required;
- land register extract showing the position before commencement of the works, or historical land register extract
- settled invoices,
- certifications issued by the technicians concerning the construction measure and the reasonableness of the expenditure;
- resolution of the condominium meeting;

- in the case of energy-saving measures, the relevant certificates;
- certification by the auditor,
- anti-money-laundering certificate.

Newly added are:

- in the case of earthquake-safe construction, the relevant certificates and
- in general, copies of the works contracts signed by the client and the contractor.

The last point in particular will once again entail additional bureaucratic effort, since until now it was not always necessary to have a written works contract, as written form is, as is known, not essential for a works contract.

If these documents are missing, this in itself is not yet a ground for joint and several liability and, above all, not proof of intent or gross negligence. The taxpayer may demonstrate his diligence by any means whatsoever. And importantly: it is for the tax office to prove, where applicable, intent or gross negligence on the part of the taxpayer in order to claim joint and several liability. <u>Important: in the light of the new provisions, particular attention must be paid to the need to draw up works contracts in written form.</u>

We remain at your disposal for any further information.

Yours sincerely

Josef Vieider