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To all
clients

Circular
No. 26/2023

Bolzano, 16 June 2023

Subject: Solidarity levy payable by energy companies – due on 30 June 2023

We already informed you briefly at the beginning of the year: Art. 1 paragraphs 115-121 of Law 197/2022 introduced a set of rules under which, in 2023, in principle all those corporations and commercial entities which in 2022 generated at least 75% of their sales revenues from the production of, or trade in, energy must pay a solidarity levy on the previous year's excess profit by 30 June 2023.
The Italian Revenue Agency already published the necessary instructions by Circular No. 4/E of 23 February 2023, and the payment codes were established by an Order of 14 March 2023. Since then, however, things have gone quiet around the levy, almost as though it were to be passed over in silence. Conversely, no requests for a deferral or an amendment have been made to date. Unless, therefore, a miracle occurs at the very last moment, the tax will in all likelihood have to be paid by the end of the month. Here are the details:

Subjective scope of application:
Those affected are corporations and commercial entities resident in Italy, or permanent establishments of foreign companies operating here, which carry out activities in the following areas and generate at least 75% of their sales revenues from them:
- production of electricity, of methane gas or of natural gas for subsequent sale;

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- trade in electricity, methane gas and natural gas,
- production and distribution of, or trade in, petroleum products,
- import or intra-Community acquisition of electricity, natural gas, methane gas and petroleum products for subsequent sale.

In essence, these are activities defined by the following ATECO codes:

06.20.00 Extraction of natural gas
19.20.10 Petroleum refineries
19.20.20 Manufacture or blending of petroleum derivatives (excluding petrochemicals)
19.20.30 Blending and bottling of liquefied petroleum gas (LPG)
19.20.90 Other processing of mineral oils
35.11.00 Production of electricity
35.14.00 Trade in electricity
35.21.00 Production of gas
35.23.00 Trade in gas through mains
46.71.00 Wholesale trade in mineral oil products, lubricants for motor vehicles, fuels for heating systems
47.30.00 Retail trade in motor fuels.

Expressly excluded are, in addition, undertakings which merely operate platforms for the organisation of and trading in energy and certificates, as well as micro-enterprises carrying out the retail sale of fuel (activity code 47.30.00).

<u>Important: partnerships and sole proprietorships as well as non-commercial entities are not affected by the levy.</u>

The levy is due where the companies generated at least 75% of their sales revenues from the aforementioned activities in the energy sector in the financial year preceding 1 January 2023 (i.e. as a rule in 2022). Caution: the reference figure for checking whether this threshold of 75% is exceeded is not VAT turnover; rather, the revenues within the meaning of Art. 85 of the Income Tax Code (TUIR) are to be taken into account, i.e. as a rule the sum of A.1 and A.5 of the profit and loss account (whereas A.2, A.3 and A.4 are disregarded). It follows that, for example, in the case of photovoltaic installations and hydroelectric power plants, not only the revenues from the sale of electricity are to be taken into account, but also any GSE grants, which are as a rule shown under A.5 of the annual financial statements.

Taxable base of the solidarity levy and calculation

What is taxed is the excess profit of the year 2022 as compared with the previous years. In calculating the tax, reference is made to the profit as determined for IRES purposes. The special tax itself is determined by applying a rate of 50% to the excess profit of the financial year preceding 1 January 2023 (i.e. as a rule 2022) as compared with the average profit of the four preceding financial years, provided that this excess profit amounts to at least 10%. And the tax may not exceed 25% of the company's net equity as shown in the last annual financial statements preceding 1 January 2022 (i.e. as a rule as at 31 December 2021).

Here are the details of the calculation:
The solidarity levy therefore amounts to a hefty 50% (fifty per cent) of the excess profit in 2022 as compared with the 4 preceding years, in so far as this profit exceeds the average profit of the 4 preceding years by at least 10%. What matters is the taxable profit before offsetting against any loss carry-forwards or against the ACE, i.e. in principle the figure resulting from line RF63 of the tax return.
Accordingly, in the case of financial years which coincide with the calendar years, the average of the taxable profits of the years 2018 – 2021 is in principle determined, and this average profit is then first increased by 10%. Example: average profit 2018 – 2021 Euro 500.000, increased figure 550.000 Euro. This figure is then compared with the taxable profit of the year 2022 (e.g. 700.000 Euro), and the substitute tax of 50% (i.e. 75.000 Euro) is then calculated on the difference (in the example, therefore, on 150.000 Euro). If there is no positive difference, no tax is due either.
In so far as the activity was commenced only after 2018, the average is determined over the remaining years. However: no tax is due if the activity was taken up only in 2022.

In addition, there is an upper limit for the tax: the tax may under no circumstances exceed 25% of the net equity of the 2nd preceding financial year (i.e. as a rule the balance sheet as at 31.12.2021). If, in the above example, the 2021 annual financial statements showed net equity of 200.000 Euro, the tax due would not be 75.000 Euro, but only 50.000 Euro.

Payment of the tax

The solidarity levy is to be paid as a one-off payment within the 6th month following the close of the last financial year preceding 1 January 2023, i.e., in the case of a financial year coinciding with the calendar year, by 30 June 2023. The circular mentioned at the outset provides, however, that where the extended approval period of 180 days for the 2022 annual financial statements is availed of and the financial statements are approved only in the month of June 2023, payment need only be made by the end of July 2023.
Payment must be made by means of form F24. The payment code is 2716. Incidentally,

“AAAA” is to be indicated as the reference year, evidently in order to underline the one-off character of the solidarity levy.

Practical notes:
We will send you the calculation and the form F24 for the solidarity levy in the next few days.

We remain at your disposal for any further information.

Yours sincerely
Josef Vieider