The Italian Tax Agency clarifies the application of Italian VAT Grouping legislation effective January 1st, 2019

On October 31st, 2018 the Italian Tax Agency issued Circular letter 19/E laying down extensive clarifications concerning the application of VAT Grouping legislation (enacted in 2017 and effective on an optional basis as from January 1st, 2019) that can be of relevance both for Italian and non-Italian based groups. The Circular letter touches upon sensitive issues such as participation to VAT Grouping arrangements of securitization vehicles and eligibility for VAT Grouping of foreign-owned Italian companies.

In general terms the Circular letter contains inter alia the following clarifications:

- only taxable persons for VAT purposes established in Italy may be part – as controlled entities – of a VAT Grouping arrangement. Non-taxable persons, such as passive holding companies, can act only as controlling entities;
- in order for a company to be eligible for VAT Grouping, entities must be subject to the provisions of the Italian Civil Code concerning the exercise of the right to vote in the shareholders' meeting (i.e. Art. 2359 Italian Civil Code);
- VAT Grouping can be applied every time companies are linked by financial, economic and organizational links and has an "all in – all out" nature. In presence of direct control under Art. 2359 (1) (1) Civil Code the above links are deemed to be present. The presumption is rebuttable and companies arguing that one (or more) link is not present must file a ruling request;
- Italian permanent establishments of non-resident companies are eligible for VAT Grouping and are subject to the "all in-all out" principle;
- VAT Grouping can be applied to every economic sector, even if it is carried on through the use of segregated assets. Therefore also asset management companies (i.e. società di gestione del risparmio) and securitization/covered bond vehicles can be part of a VAT Grouping arrangement;
- Italian entities controlled by foreign holdings may apply for VAT Grouping to the extent they are established in countries allowing an adequate exchange of information (so-called "white list" countries);
- in order to be part of a VAT Grouping arrangement, entities must be controlled from July 1st of the year preceding the one in which the option becomes effective;
- the option must be exercised by September 30th of the year before the one in which the option is effective. Limitedly to the first time adoption of the provision (i.e. the one effective as from January 1st, 2019) the option can be exercised by November 15th, 2o18. Options exercised after the above deadlines are valid for the following year (for instance, an

option exercised in December 2019 will be valid as from January 1st, 2021);

- once the option is exercised, the VAT Grouping becomes a single VAT taxable person with its own VAT identification code. This principle implies that:

    - the VAT Grouping will be the taxable person that will perform domestic and intracommunity supplies, imports and exports and will be burdened by all VAT rights (VAT deduction, refunds, etc.) and obligations (invoicing, accounting, etc.);
    - VAT Grouping willing to perform intracommunity supplies of goods shall request the inclusion in the VIES system;
    - supplies of goods and services between entities included in the VAT Grouping arrangement are not relevant for VAT purposes, unless the VAT Grouping opts for separate accounting (see below);
    - the VAT Grouping will be entitled to opt for separate accounting for VAT purposes with respect to separate branches of activity. In such a case, supplies of goods and services among the various branches of activities may be relevant for VAT purposes if separate accounting shows a different pro-rata ratio of deduction between the branches of activity;
    - dealings between Italian VAT Grouping and foreign branches will be relevant for VAT purposes under special provisions implementing the principles enshrined in the decision of the European Court issued on September 17th, 2014 relating to case C-7/13 (Skandia). The Circular letter clarifies that the same relevance is deemed to exist also in the opposite case (i.e. dealings between Italian permanent establishments and foreign VAT Grouping arrangements). Such relevance, however, applies limitedly to transactions carried on as from January 1st, 2018;

- the Circular letter clarifies in detail the circumstances under which, after the exercise of the option, controlled companies become part or must be excluded from the VAT Grouping arrangement;
- finally the Circular letter makes clear that Split Payment legislation is not applicable to VAT Groupings even if the participating companies are caught by the relevant provisions.

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