CHIOMENTI

Newsletter

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Consequences of Brexit from a tax perspective.

1. Introduction

As of 1 January 2021, the transition period envisaged under Article 126 of the EU-UK withdrawal agreement ("**Transition Period**") came to an end, so that EU law is no longer binding upon the UK as well as applicable to cross-border relationships between EU Member States and the UK (and their respective nationals and/or residents).

Also, by virtue of the withdrawal from the EU, the UK is no longer a member of European Economic Area ("**EEA**").

This Newsletter is aimed at depicting an overview of the Italian tax ramifications of Brexit, also in light of the tax provisions enshrined in the agreements entered into by the EU and the UK at the end of December 2020, such as the Trade and Cooperation Agreement ("**TCA**").

2. EU-UK commitments with regard tax matters

According to Part Two, Title IX, Chapter 5 of the TCA, the EU and the UK commit to implementing the principles of good governance in tax matters, in particular the global standards on tax transparency and exchange of information, fair tax competition and OECD minimum standards against BEPS.

In addition, the EU and the UK undertook not to weaken or reduce the level of protection provided in their legislation at the end of the Transition Period below the standards and rules agreed upon in the OECD at the end of the Transition Period with regard to:

- provisions concerning interest-deduction limitation, controlled foreign companies and hybrid mismatches;
- the exchange of information (upon request, spontaneous or automatic) concerning financial accounts, cross-border tax rulings, country-by-country reports, potential cross-border tax planning arrangements and country-by-country reporting by credit institutions and investment firms.

In light of the above, it should be possible to assume that the UK will continue to be deemed, under Italian legislation, as a Country allowing for an adequate exchange of information for tax purposes – thus being included in the so-called "white-list" enacted through Ministerial Decree 4 September 1996 – and ensuring assistance in tax collection by virtue of the legal instruments entered into by the UK.

3. Italian withholding taxes on outbound flows towards UK recipients

As of 1 January 2021, certain Italian favorable tax provisions entailing a reduction and/or exemption on withholding taxes on flows from Italy towards EU investors ceased to be applicable vis-à-vis UK-resident recipients. Therefore, from now on, UK investors may rely upon either domestic exemptions or the Double Tax Treaty between Italy and the UK ("**DTT**") to mitigate tax leakages that may affect returns from their investments in Italy, to the extent that the requirements provided therein are met.

We will provide here after an overview of the main withholding tax provisions.

Dividend payments

Dividends distributed by Italian-resident companies in favour of qualifying, EU-resident shareholding companies are exempt from ordinary Italian withholding taxes according to Article 27-*bis*, Presidential Decree 29 September 1973, No. 600 ("**Decree No. 600/1973**") – implementing in Italy the EU Parent-Subsidiary Directive – to the extent that the conditions provided therein are met.

Also, dividend distributions made by Italian-resident companies in favour of qualifying entities resident in an EU Member State or a "white-list" EEA Member State are subject to a withholding tax at 1.2% rate, pursuant to Article 27, paragraph 3-*ter*, Decree No. 600/1973.

Furthermore, dividends distributed by Italian-resident companies to pension funds established in an EU Member State or a "white-list" EEA Member State are subject to an Italian withholding tax at 11% rate, pursuant to Article 27, paragraph 3, Decree No. 600/1973.

This said, as of the end of the Transition Period, dividend payments towards UK recipients are no longer eligible to benefit from the above exemption and reductions, thus being subject, in principle, to a final 26% withholding tax.

Anyhow, should a UK-resident recipient meet the requirements envisaged under the DTT, Italian withholding tax rate on dividend distributions would be limited to:

- 5%, if the beneficial owner is a company controlling, directly or indirectly, at least 10% of the voting power in the company paying the dividends;
- 15%, in all other cases,

to the extent that dividends received by a UK beneficial owner - owning more than 10% of the class of shares in relation to which dividends are paid - (i) are not paid only out of profits earned by the Italian distributing entity in the twelve-month period before the acquisition of at least 10% of a class of shares by the UK beneficial owner, and (ii) derive from shares that have been held continuously in the twelve-month period ending on the date the dividend is declared.

Finally, it is worth noting that the scope of the above 1.2% and 11% withholding taxes, which is currently limited to entities and pension funds established in the EU/EEA, should be also considered under the light of the free movement of capital enshrined under Article 63 of the Treaty on the Functioning of the European Union ("**TFEU**"), which is available also to Third Country nationals, whereas such limitation may prove contrary to EU law.

Intra-group interest and royalty payments

Intra-group interest and royalty payments made by Italian-resident companies in favour of qualifying, EU-resident entities are exempt from ordinary Italian withholding taxes according to Article 26-*quater*, Decree No. 600/1973 (implementing in Italy the EU Interest & Royalty Directive), to the extent that the conditions provided therein are met.

By virtue of the end of the Transition Period, intra-group interest and royalty payments towards UK recipients are no longer eligible to above exemption, thus being ordinarily subject to final withholding taxes at, respectively, 26% and 30% statutory rate.

Anyhow, should a UK-resident recipient meet the requirements envisaged under the DTT, Italian withholding tax rate on interest and royalty payments may be reduced, respectively, to 10% and 8%.

Interest payments on medium-long term financings

Pursuant to Article 26, paragraph 5-*bis,* Decree No. 600/1973, interest arising from a financing transaction and paid in favor of foreign lenders by an Italian tax-resident borrower are not subject to withholding tax in Italy if the following conditions are jointly met:

- the lender qualifies, inter alia, as (i) a credit institution (*i.e.,* a bank) established in the EU, (ii) an insurance company incorporated and authorized to carry on insurance activity under the law of EU Member States, and (iii) a foreign institutional investor established in a “white-list” jurisdiction – even if it is not liable to tax – and subject to regulatory supervision therein;
- the lender complies with Italian provisions concerning the reserved nature of financing activities performed vis-à-vis the public (*riserva di attività*) set forth by the “Italian Banking Act”[1];
- interest and other proceeds derive from a medium-long term loan, *i.e.*, loans having an original maturity of more than 18 months;
- the borrower is an Italian enterprise, *i.e.,* an entity carrying out an entrepreneurial activity (such as corporate entities).

As a result of Brexit, UK-established credit institutions and insurance companies are no longer entitled to benefit from such an exemption from Italian withholding tax on interest payments, thus being ordinarily subject to final withholding tax at 26% rate.

Conversely, UK-established institutional investors may still benefit from the favorable tax provision set out under Article 26, paragraph 5-*bis*, Decree No. 600/1973.

In this respect, it is debatable whether a credit institution or an insurance company established in the UK may fall within the definition of “institutional investor”, thus benefitting from the exemption from withholding tax on interest payments.

In any case, should a UK lender meet the requirements envisaged under the DTT,

[1] For the sake of clarity, this requirement is deemed to be met in intra-group financing.

Italian withholding tax rate on interest payments may be reduced to 10%.

Interest payments on bonds

If certain conditions are met[2], payments of interest on bonds may fall within the scope of the substitute tax regime set out under Legislative Decree 1° April 1996, No. 239 ("**Substitute Tax Regime**"), thus being exempt from Italian withholding taxes and substitute taxes if, inter alia, non-resident recipients qualify as:

- foreign investors resident in "white-list" jurisdictions;
- foreign institutional investors established in "white-list" jurisdictions, even if not liable to tax in the Country in which they are formed; or
- public bodies established on the basis of international treaties in force in Italy or central banks.

The entitlement to the Substitute Tax Regime of UK-established bond-holders is not affected by Brexit, since the UK should continue to be considered a "white-list" jurisdiction for Italian tax purposes.

Interest payments towards EU/EEA SPVs issuing listed bonds

Pursuant to Article 26-*quarter*, paragraph 8-*bis*, Decree No. 600/1973, interest paid by an Italian-resident entity arising from a financing granted by an EU-incorporated company vehicle (i) potentially qualifying for the Interest & Royalty Directive, but (ii) lacking beneficial ownership over the interest flows, are subject to a 5% withholding tax to the extent that such flows are aimed at servicing payments of interest arising from bonds issued by the EU company vehicle, which are:

- listed on an EU or "white-list" EEA stock exchange;
- secured by the Italian resident entity, its parent company and/or one of its subsidiaries.

As a result of Brexit, UK-established company vehicles, as well as EU-resident companies that issued bonds listed in a UK stock exchange, are no longer entitled to benefit from such 5% withholding tax on interest payments, thus being ordinarily subject to final withholding tax at 26% rate.

Proceeds distributed by Italian UCIs

[2] The bonds shall be alternatively (i) issued by entities whose shares are listed on a Stock Exchange of an EU or EEA Member State, (ii) negotiated in an EU or EEA multilateral trading facility, or (iii) exclusively held by one or more "qualified investors", under Article 100 of Legislative Decree 24 February 1998, No. 58.

In principle, income realised from investments in undertakings for collective investments ("**UCIs**") established in Italy by a non-resident investor (without a permanent establishment in Italy) would be liable to a final 26% withholding tax.

If certain conditions are met, a specific exemption would be applicable on income realized by a foreign investor qualifying as:

- a resident in "white-list" jurisdictions;
- a foreign institutional investor (i) established in "white-list" jurisdictions, (ii) even if not liable to tax in the Country in which it is formed; or
- a public body established on the basis of international treaties in force in Italy or a central bank.

The entitlement to the above regime of UK-established investors is not affected by Brexit, since the UK would continue to be considered a "white-list" jurisdiction for Italian tax purposes.

Dividends and capital gains realized by UK investment funds

Italian Budget Law for 2021 enacted a very favourable set of provisions for foreign funds investing in Italian resident companies, with a view to repealing a tax framework that has long been potentially discriminatory in the context of EU law.

In a nutshell, any distribution of profits and/or capital gain derived by qualifying foreign investment funds from shareholdings (or financial instruments equated with shares for Italian tax purposes) in Italian tax resident companies are subject to neither withholding tax or substitute tax on capital gains.

In order to benefit from such a favorable tax treatment, foreign investment funds should qualify as UCIs established either:

- in accordance with Directive 2009/65/EC (so-called UCITS Directive); or
- in an EU Member State or a "white-list" EEA Member State, whose manager is subject to regulatory supervision in the Country where it is established pursuant to Directive 2011/61/EU (so-called AIFM Directive).

As a result of Brexit, UK-established investment funds are not entitled to benefit from such exemptions, thus being ordinarily subject to (i) a final withholding tax at 26% on dividend distributions, and (ii) a 26% substitute tax on capital gains arising from "substantial" shareholdings in Italian-resident companies.

UK investment funds may benefit from DTT reductions, to the extent that the relevant vehicles meet the DTT requirements.

This new setting should be considered under the perspective of the free movement of capital for a potential infringement of EU law in relation to dividends paid to UK-established investment fund.

4. Brexit and Consequences for Corporate Tax

Brexit will have an impact on certain domestic provisions concerning the Italian corporate income tax ("**IRES**"), since the fact that a foreign State belongs to the EU/EEA allows the application of certain tax regimes, generally included within the Italian tax framework in order to grant EU rights.

Provisions concerning foreign sourced dividend and capital gains (Article 47-*bis* of ITC)

Article 47-*bis* of the Presidential Decree of 22 December 1986, No. 917 (the Italian tax code, "**ITC**"), introduced by the Legislative Decree of 29 November 2018, No. 142 (the "**ATAD Decree**") - implementing Directive 2016/1164/EU (the "**EU ATAD Directive**") - set forth certain tests in order to qualify a foreign company as residing in a low-tax jurisdiction.

In particular:

- foreign controlled entities pursuant to Article 167, paragraph 2, ITC, are considered to benefit from a privileged tax regime if they are subject to an effective tax rate lower than 50% than the one applicable had the entity been resident of Italy;
- foreign non-controlled entities are considered to benefit from a privileged tax regime if the nominal tax rate is lower than 50% of the one applicable in Italy.

It is worth noting that such provisions are not applicable to entities that are resident of EU/EEA Member States allowing an adequate exchange of information, as low-tax jurisdictions.

The provisions of Article 47-*bis* of ITC affect, in particular, the Italian tax regime applicable to dividends and capital gains derived from foreign entities.

As a general rule, pursuant to Articles 89, paragraph 3, and 87, paragraph 1, letter c), ITC, dividends received by an Italian entity and/or capital gains realized on the disposal of a shareholding in a foreign subsidiary, not located in a low-tax jurisdictions, benefit from the participation exemption regime at a 1.2% effective corporate tax rate. On the contrary, dividends received by an Italian entity and/or capital gains realized on the disposal of a participation held in a company resident in a low-tax jurisdiction are fully subject to the 24% statutory IRES tax rate in Italy.

Due to the circumstance that the UK will not be any longer an EU/EEA State it will be now required to carry out the tests provided by Article 47-*bis* of ITC in order to check whether dividends and capital gains relating to UK companies may benefit from the participation exemption regime.

In any case, the inclusion of UK companies among those residing in a low-tax jurisdiction will depend also on the tax policies that will be implemented by the British government in the future.

Provisions on domestic tax consolidation regime (Articles 117, paragraph 2-*bis* and 120, paragraph 1-*bis,* ITC), so called "horizontal consolidation"

According to article 117, paragraph 2-*bis* of ITC, introduced by the Legislative Decree of 14 September 2015, No. 147 (the so-called "*Decreto Internazionalizzazione*"), the Italian tax consolidation regime is applicable also between two or more Italian sister companies with a common parent residing in any EU or EEA Country that provides for an adequate exchange of information with Italy (so-called "horizontal consolidation").

Under these provisions, applicable as of 2015, a non-resident parent company can designate an Italian resident subsidiary to elect for the tax consolidation regime together with each resident company controlled by the same foreign entity. In addition, the horizontal consolidation may also include Italian permanent establishments (the "**PEs**") of EU/EEA companies to the extent that the non-resident company with a PE in Italy is controlled by the same parent company.

Following the end of the Transition Period (*i.e.*, after 31 December 2020), Italian resident companies having a common parent company located in the UK (or Italian PEs of UK companies) will no longer be entitled to benefit from the horizontal consolidation regime starting from fiscal year 2021.

However, please note that, according to the guidelines provided by the Italian Tax Authorities, a UK controlling company (insofar as located in a Country that provides for an adequate exchange of information) would be still entitled to elect for the domestic tax consolidation regime to the extent that the latter is, in turn, controlled by an EU/EEA parent company.

Provisions on interest expenses deduction regime (Article 96, paragraphs 8-11 of ITC

Article 1 of the ATAD Decree – aimed at implementing the EU ATAD Directive and Directive 2017/952/EU – replaced Article 96 of ITC, introducing significant changes to the interest expenses deduction regime.

In particular, the new Article 96, paragraphs 8-11, ITC, as resulting from the implementation of the EU ATAD Directive, grants a full deduction of interest expenses in the context of the financing of long-term public infrastructure projects (the "**LTPIP**"); such regime is conditional upon the circumstance that:

- such interest expenses are secured only by assets that belong to the LTPIP operator and concern the same LTPIP;
- the project operator is fiscally resident in an EU Member State; and
- the assets are used for the realization of a LTPIP or the assets concerned by the same LTPIP are located in an EU Member State.

As a consequence of the withdrawal of the UK from the EU, the aforementioned provision will no longer applies in case of UK resident project operator or in case the assets are used for the realization of a LTPIP or the assets concerned by the same LTPIP are located in the UK.

Provisions on exit tax and tax values of entry (Articles 166 and 166-*bis* of ITC)

Brexit will also have an impact on the so-called "Italian exit tax regime" (Article 166 ITC) in case of transfers of the tax residence of an Italian company in another Country.

Indeed, pursuant to Article 166, paragraph 9, ITC, as amended by the ATAD Decree, Italian resident companies that transfer their residence into an EU/EEA Member State, are entitled to pay the exit tax due on gains deriving from the transfer of the seat, net to losses, in five equal annual instalments.

After Brexit, such deferral regime will not be applicable to Italian companies that transfer their residence to the UK.

On the other hand, with respect to the Italian tax regime applicable to the determination of the tax values of entry (Article 166-*bis* of ITC) in case of transfer of the tax residence of a company from abroad to Italy, there will be no impact from Brexit as far as the UK is included in the "white list". Therefore, in case of transfer of residence in Italy of UK companies, the tax value of the assets transferred will be equal to the fair market value of such assets at the time of transfer.

5. Implications on cross-border restructurings

As a result of Brexit, the Merger Directive (*i.e.,* Directive No. 2009/133/EC), which provides, under certain conditions, a neutrality regime to cross-border reorganizations between companies of different EU Member States, will no longer apply.

In particular, the following provisions will cease to apply:

- with regard to mergers and demergers, the neutrality regime pursuant to Article 179 of ITC – which refers to Articles 172 and 173 of ITC – would not apply to mergers and demergers involving UK resident companies;
- with regard to contributions of businesses, the notional tax credit pursuant to Article 179, paragraphs 3 and 5, of ITC will not apply to the capital gains realized by a foreign branch held by Italian tax resident companies and transferred to an UK tax resident company;
- with regard to exchanges of shares, the neutrality regime pursuant to Article 179, paragraph 4, of ITC will not apply. However, Italian taxation on capital gains potentially arising from exchange of shares in relation to Italian substantial shareholdings is generally excluded according to DTT, if the requirements are met. In addition, the tax regime set forth by Article 177 of ITC (*realizzo controllato*) is still applicable, if the relevant conditions are met.

6. Brexit and EU Dispute Resolution Mechanisms

Following the end of the Transition Period (*i.e.,* after 31 December 2020), as expressly stated by the UK tax authority (the "**HMRC**") on 1° December 2020, dispute resolutions among the UK and EU Countries are no longer covered by (i) Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, and (ii) the European Union Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (hereinafter, respectively, the "**Dispute Resolution Directive**" and the "**Arbitration Convention**").

Indeed, the Dispute Resolution Directive applies only to EU Member States. The Arbitration Convention, being an intra-EU agreement, were executed by the UK by virtue of its status of EU Member State. Due to the fact that, following the end of the Transition Period, the UK does not qualify anymore as an EU Member State, the UK no longer falls within the scope of both the Dispute Resolution Directive and the Arbitration Convention.

The HMRC specified that the UK will not consider any requests for access to the Dispute Resolution Directive and the Arbitration Convention filed after the end of the Transition Period. However, the UK will still deal with cases whose requests have been received before the end of the Transition Period. In this respect, it is debatable that requests submitted after the end of the Transition Period but relating to fiscal years prior to the exit day (*i.e.,* before 31 January 2020) will not be considered by the UK competent authorities.

The DTT – which, *inter alia*, includes tax dispute resolution provisions – will be the only available instrument after the end of the Transition Period. According to the relevant DTT provisions (see Article 26), the Italian and the UK competent authorities shall endeavour (*i.e.,* are not bound) to settle a question in dispute by a mutual agreement procedure. Currently, the DTT does not provide for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

However, a mandatory binding arbitration provision may be included in the DTT once the so-called MLI (*i.e.,* the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) – which has been already ratified by the UK – will be ratified also by Italy. In this respect, it should be pointed out that, based on the current Italian MLI positions, such mandatory binding arbitration provision, which may be included in the DTT, would apply to cases submitted to the competent authorities following the entry into force of the MLI, unless otherwise agreed between Italy and the UK.

7. Brexit and the related impacts on VAT

Following the end of the Transition Period (*i.e.,* after 31 December 2020), the UK is no longer covered by Council Directive 2006/112/EC (the "**VAT Directive**") and, hence, bound by the VAT system. Notwithstanding this, also following the end of the Transition Period, the UK undertakes to cooperate with the EU to ensure compliance with VAT legislation and to protect VAT revenues.

Supply of goods

The first basic consequence, arising from the fact that the UK does not qualify anymore as an EU Member State, is that supplies of goods from the UK to the EU and *vice versa* do not qualify anymore as intra-EU supplies but, rather, as imports or exports, subject to custom formalities starting from 1° January 2021.

From a practical perspective, after 1° January 2021, EU operators transferring goods from the EU to the UK shall, *inter alia*: (i) obtain specific registration numbers, and (ii) file an exit summary declaration before the relevant customs authority of the Country where the export starts or where the exporting company is established, depending on how the goods are transported. Goods exported to the UK are, in principle, VAT exempt, to the extent that it is proved that the relevant goods have left the EU.

On the other hand, EU operators transferring goods from the UK to an EU Member State shall, *inter alia*: (i) obtain specific registration numbers, and (ii) file an entry summary declaration in advance of the arrival of the goods with the customs authority where the first arrival in the EU will take place. From 1° January 2021, imports of goods from the UK to an EU Member State are subject to VAT in the relevant EU Member State, at the rate applicable to the same goods in such Member State.

Goods moving at the end of the Transition Period

Particular attention should be paid to the supply – between the UK and EU – of goods departing before 31 December 2020 and arriving at their destination after 1° January 2021. Such supplies should be considered as intra-EU transactions subject to the custom and VAT rules existing before the end of the Transition Period (*i.e.,* no custom procedures should apply). Such VAT treatment is subject to the proof that, *inter alia*, the movement of the goods started before the end of the Transition Period. Such proof shall be given by the relevant operators once the relevant goods reach the EU-UK border.

Distant selling and sales of digital services

Following the end of the Transition Period (*i.e.,* after 31 December 2020), distance sales are no longer covered by the VAT Directive. From a practical perspective, from 1° January 2021, supplies of goods between the EU and the UK are subject to VAT rules on imports and exports. VAT will be due at import into the EU, at the rate applicable to the same goods in the relevant EU Member State. Goods brought into the EU from the UK will be subject to customs formalities and may be subject to customs controls in accordance with EU customs rules.

EU businesses selling digital services to UK customers will not be able to use the VAT Mini-One Stop Shop (the "**MOSS**") to report and pay VAT due in the UK. The said EU businesses shall comply with the rules applicable in the UK. Similarly, after the end of the Transition Period, UK businesses selling digital services to EU customers shall switch from the MOSS to the so-called "non-EU MOSS". In particular, the said UK businesses shall register in an EU Member State, to report and pay the VAT due on the digital services supplied within the EU from 1° January 2021. This has been confirmed also by the Italian Tax Authorities on 31 December 2020.

VAT refund

Brexit will also have a direct impact on the VAT refund procedure.

As to VAT paid on or before 31 December 2020, the relevant VAT rules continue to apply (see Article 7 of Council Directive 2008/9/EC). Accordingly, taxpayers established in an EU Member State or in the UK still may submit an electronic refund application of the VAT paid, respectively, in the UK or in the relevant EU Member State. In this respect, it should be pointed out that such refund claims relating to VAT paid on or before 31 December 2020 must be submitted at the latest on 31 March 2021 (see Article 51, paragraph 3, TCA). Please note that such date departs from the usual rule whereby electronic refund applications can be submitted until 30 September of the calendar year following the relevant refund period.

As to VAT paid on or after 1° January 2021, new rules shall apply. From 1° January 2021, UK taxpayers are required to use the existing refund procedure available for non-EU businesses (see Council Directive 86/560/EEC).

VAT registration for UK businesses

Since, following the end of the Transition Period, the UK does not qualify anymore as an EU Member State, UK businesses directly registered for VAT purposes in Italy should consider: (i) ending their direct registration under Article 35-*ter* of Decree 26 October 1972, No. 633, and (ii) applying for a new VAT registration number through their Italian tax representative. Both the steps *sub* (i) and (ii) above can be made through the presentation of specific forms to the Italian Tax Authorities.

Direct VAT registration under Article 35-*ter* of Decree 26 October 1972, No. 633 is available for businesses established in EU Member States. Conversely, businesses established in Third Countries can only apply for such direct VAT registration, to the extent that the relevant Third Country executed an agreement for reciprocal administrative assistance for indirect taxation. The Italian Tax Authorities stated that, as soon as it has completed its review of the TCA, it will clarify whether a reciprocal assistance agreement exists between the EU and the UK, whereby the direct VAT registration *sub* (i) above will be available for non-established UK businesses also going forward.

However, UK businesses should follow the steps *sub* (i) and (ii) above, based on a prudent approach. Indeed, should the Italian Tax Authorities deny in the future the validity of their VAT registration, it is not currently clear which consequences would derive for non-established UK business that have not appointed a tax representative in Italy. In the envisaged case, it is uncertain whether UK businesses that have not ended their direct VAT registration in Italy will be allowed to recover input VAT incurred from 1° January 2021, also considering that tax representatives are not allowed to recover input VAT charged before their appointment.

8. Relocating to Italy after Brexit

Brexit had significant knock-on effects on individuals' mobility whereas British individuals lost, as of January 1, 2021, their ability to benefit from the EU free movement of people principle pursuant to Directive 2004/38/EC of 29 April 2004 and are now required to fulfill specific immigration law requirements in order to permanently reside, work, or study in Italy.

This comes with a cost for those individuals willing to transfer their tax residence to Italy, for now it will be necessary for them to obtain a VISA and a related permit of residence for stays exceeding 90 days in any 180-day period.

In particular, the necessity of a VISA/permit of residence shall be carefully considered by those individuals willing to move their tax residence to Italy by virtue of their enrolment in the Italian registry of the resident population for the greatest part of a calendar year. Indeed, having an Italian real estate property at disposal will no longer be sufficient in order to complete the enrollment procedure.

Conversely, a derogation is provided for British individuals already enrolled in the registry of the resident population by 31 December 2020, who will maintain their residence rights unprejudiced. In fact, such individuals will be entitled to receive an electronic residence document, issued by local police headquarters (*Questura*) and having a 5/10-years validity depending on the previous residence period, that will grant them the right to permanently reside in Italy.

Pursuant to art. 18.4 of the Withdrawal Agreement between the European Union and the United Kingdom, in order to apply for the electronic document, the individual shall obtain from the municipality of residence a specific certificate (*attestato di iscrizione anagrafica*), stating that he/she results to be enrolled by December 31, 2020.

In such context, the so called "Investor VISA" introduced by Law no. 232 of 11 December 2016 for non-EU/EEA nationals intending to carry out investment in strategic areas for the Italian economy could become a viable option for UK citizens willing to relocate to Italy.

9. Wealth taxes on foreign immovable properties

Italian tax resident individuals owning immovable properties (*e.g.*, land, buildings and apartments) located abroad are subject to tax ("**IVIE**") on such immovable properties, applied at a 0.76% rate.

Whilst the IVIE tax base is represented by the cadastral value used in the relevant foreign State (for the UK, that is the value considered for Council Tax purposes) with respect to immovable properties located in a EU/EEA State, Brexit makes it so that the IVIE taxable base will now coincide with the value as declared in the purchase agreement or, in the absence of such figure, with the fair market value property of the immovable

This implies an additional tax burden for Italian tax resident individuals owning UK immovable properties, also given that, according to the Italian tax authorities, the Council Tax paid in the UK cannot be credited against the IVIE due.

Similarly, such higher value shall be indicated by Italian tax resident individuals in their yearly personal income tax return for tax monitoring purposes.

10. Miscellanea

Certain other Italian tax provisions are impacted by Brexit, as summarized below:

- the application of the Italian substitute tax of indirect taxes on mid-long term financing will be available only in case of qualifying EU/EEA-established lenders;
- the exemption from the application of the Italian Financial Transaction Tax with respect to transaction carried out by pension funds set up in an EU Member State and subject to regulatory supervision in their home Country according to Directive 2003/41/EC;
- the exemption from Italian inheritance and gift tax for transfers in favour of qualifying charitable bodies established in an EU Member State and for transfers aimed at pursuing a qualifying charitable purpose in favour of public entities, foundations and association established in an EU Member State (a special exemption could be applied subject to reciprocity condition);
- the exemption from inheritance tax with respect to public bonds issued by an EU/EEA Member States;
- proceeds derived by Italian-resident individuals from investment funds established in an EU Member State or "white-list" EEA Member State are subject to a 26% final withholding tax, rather than being included in the overall taxable

income of the individual subject to progressive personal income tax. As of the end of the Transition Period, proceeds derived by UK-established investment funds are no longer eligible for the 26% withholding tax and, therefore, any item of income realized by an Italian-resident individual from such investment funds would be included in his/her overall taxable income subject to progressive personal income tax (up to a 43% top-bracket rate, plus surcharges).

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