With the decision No. 8500 of March 25, 2021, the Italian Supreme Court, in United Sections, has negatively addressed the long-standing debate concerning the statute of limitations of tax authorities' power of assessment in relation to multiannual income components (e.g., mainly, depreciation charges, tax credit deductions and carried forward losses), giving relevance to the period in which the tax return reports the income component and not to the original fiscal period when the income or the loss accrued and is firstly recognised in the financial statements.

Warning & Actions:

This is not a change of law but an authoritative interpretation of the Italian High Court in its most relevant session. The principle stated in the decision may have a significant impact on tax assessments and pending tax litigations related to the tax deduction of multiannual costs, tax losses and/or the assessment of the legal ground to deduct tax credit instalments.

Italian companies or branch of foreign companies should carefully reconsider the current legal policies and best practices in maintaining and archiving business supporting documentation for periods exceeding the ordinary ten years statute of limitation term, every time multiannual income/loss components or tax credits may produce effects over such period.

Summary of the decision

The Italian Supreme Court stated that, in case of tax assessments of a multi-year income component for reasons other than the erroneous calculation of the deduction, the counting of tax statute of limitation period begins from the filing of each tax return in which the multiannual income component is reported and not from the filing of the original tax return where that component accrued or was recognised for the first time in the financial statement.

This conclusion is based on the principle of autonomy of each tax period. In particular, the Supreme Court clarified that the income tax calculation rules justify the power of assessment of the tax authorities, which should assess any income component, regardless of its annual or multiannual nature, in order to avoid any form of discrimination between the two types of income components. Accordingly, tax authorities may assess, on a yearly basis, the incorrect deduction of multiannual costs. Indeed, as noted by the Supreme Court, the expiry of statute of limitation of assessment of the tax period in which the multiannual income is firstly reported in the tax return, does not prevent tax authorities from issuing a tax assessment relevant to the following tax returns including an instalment of the same multiannual income, cost or tax credit component.

Conclusions

The principle expressed in the decision at stake is very significant since all tax returns include multiannual income, costs or tax credit components generated in previous fiscal periods. For instance, the depreciation of immovable assets may take up to 30 fiscal periods, goodwill arising from M&A transactions may be depreciated up to 18/20 years, tax credits on qualified investments must be deducted in 10 year instalments, tax losses can be carried forward indefinitely and many other income components could find their original event and tax reporting at a time more remote than the tax statutory limitation period of 5 years or the 10 years ordinary limitation pursuant to Art. 2946 Civ. Cod..

This implies that the Company should be able, in case of future or pending tax assessments on the legitimate deduction of a multiannual income component, to provide evidence of the existence, relevance and amount of these expenses or investments, keeping in its digital or physical archives all the relevant supporting documentation and their related company' books and ledgers for a period much longer than the ten-year statute of limitation period.

The Supreme Court replies to this legitimate objection pointing out that the bookkeeping regime should be compliant with and instrumental to the tax assessment provisions and not vice versa.

We remain at your disposal for any request of clarification,

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