

NEW RULE ALLOWS ASSIGNMENT OF QUARTERLY VAT RECEIVABLES AS FROM 1 JANUARY 2020

Article 12-sexies of Law Decree 30 April 2019, No. 34 ("**LD 34/2019**") (so-called "*Decreto Crescita*"), recently converted by law 28 June 2019, No. 58, amended Article 5(4-ter) of Law Decree 14 March 1988, No. 70 ("**LD 70/1988**"), introducing the option for value added tax ("**VAT**") taxable persons to assign quarterly VAT credits with obligatory effects vis-à-vis the Italian Tax Authorities ("**ITA**").

This new provision will apply to credits for which the reimbursement is requested as from 1 January 2020, provided that conditions for quarterly reimbursement requests set forth by Article 38-bis of Presidential Decree 26 October 1972, No. 633 are met (e.g. as for the refund of VAT on the purchase or import of depreciable assets for an amount greater than two thirds of the overall amount of purchases and imports of goods and services).

The amendment made by *Decreto Crescita* definitely solved the contrast between the strict interpretation of ITA and the broader position upheld by scholars and tax courts.

ITA always considered that the provision set forth by article 5(4-ter) of LD 70/1988 only allowed the assignment of VAT receivable emerging from the yearly tax return. This was because the provision in question (now amended) literally provided for ITA to be empowered to repeat the amounts resulting from the yearly VAT tax return from the transferee. In a nutshell, in the absence of an express reference in the amended rule to quarterly refunds, ITA affirmed, through two circular letters, that (a) "[...] it is implicitly inferred that the credit relating to interim repayments cannot be assigned, since there is no limit to the possibility of repeating the sums assigned [...]" (see Circular letter of 13 February 2006, No. 6, §12.4); and (b) "[...] VAT credits referred to the interim refund requests cannot be subject of a significant transfer to the tax authorities" (see Resolution of 4 April 2006, No. 49).

This restrictive interpretation of the ITA has never been fully shared by the scholars (see standard of conduct of the Italian Chartered Accountant Association of 22 June 2006, No. 164) and by case law, both lower courts (see Venice Court of Appeal decision No. 2252 of 2 October 2013), and the Supreme Court legitimacy (see Decision No. 13027 of 24 June 2015). Lastly, through the request filed on 20 December 2018, No. 39, Assonime (the Italian Association of Joint Stock Companies) expressly demanded for an amendment on this specific point, definitely accepted by the tax Legislator through the changes made by article 12-sexies of LD 34/2019 in comment.

As a result of such amendments, it is therefore possible for operators to discount their interim VAT credit positions more effectively, as well as for banks and financial institutions to have access, mainly in the context of loans financing acquisition or capex VAT (such as real estate and project financing), to an additional guarantee: the sale of quarterly VAT receivables.

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The Tax Law Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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