

GUIDELINES ISSUED BY THE ITALIAN TAX AUTHORITIES ON THE VAT REGIME OF THE ASSIGNMENT OF NPLs

The Italian tax administration has published guidelines in respect of the VAT regime applicable to the assignment of portfolios of non-performing loans ("**NPLs**"). In particular, with Ruling No. 79, issued on 31 December 2021, the Italian Revenue Agency confirmed the following (which position was already stated by Resolution No. 71/E of 24 May 2000 with respect to the assignment of receivables, regardless of their qualification as NPLs):

- the assignment of NPLs should be considered as a supply of services, performed by the purchaser, falling under the scope of VAT as a financial transaction. This interpretation is based on the fact that the purchase price paid is lower than the face value of such loans and, therefore, it is argued that this difference constitutes a consideration paid by the seller of the NPLs to the purchaser of the same NPLs (acting as service supplier to the same seller); and
- as such, the assignment of NPLs implies the performance of a financial transaction, which falls within the scope of application of Italian VAT qualifying as a VAT-exempt supply of services.

In other words, the Italian Revenue Agency has confirmed that the assignment of NPLs is a VAT-able transaction, even though exempt (*operazione esente*), it having a financing purpose, since the purchase price is lower than the face value of the same NPLs. As a consequence, such transactions would not be subject to the 0.5% registration tax pursuant to the so-called "alternativity" principle between VAT and registration tax.

Similarly to the approach adopted in respect of factoring transactions, the position of the Italian Revenue Agency is not consistent with the case-law of the Court of Justice of the European Union ("**CJEU**") and the approach endorsed by the EU Commission's VAT Committee. Indeed, both the CJEU and the VAT Committee have concluded that the acquisition of NPLs should not be considered as a taxable supply of services, provided that the discount reflects the lower value of the loan at the time of the purchase.

Further to above confirmations, the Italian Revenue Agency has provided the following interpretations:

- the taxable base for VAT purposes of an assignment of receivables should, in principle, be equal to the overall difference between the face value and the purchase price thereof;
- with specific regard to NPLs, only the difference between the "actual economic value" (*valore economico*) of the debt at the time of its assignment (which is lower than the face value thereof) and the purchase price paid for the transfer should be considered as the taxable base for VAT purposes;
- the assignment of NPLs should be considered to occur at the time of the payment of the purchase price for the NPLs portfolio transfer.

As to the method to be adopted in order to assess the "actual economic value", the Italian Revenue Agency does not provide detailed indications but refers to the determination made by the

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purchaser, evidence of which may be provided with the contractual documentation or (when for commercial reasons such determination is not included in the contractual documentation) also with official internal papers of the purchaser.

Based on the foregoing, it is therefore crucial that when the criteria adopted by the purchaser to assess the “actual economic value” and therefore to determine the taxable base of the transaction does not appear in the contractual documentation, detailed internal documentation is kept by the purchaser to be provided in case of audit from the tax authorities.

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The Tax 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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