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CFC RULES

Italian Approach

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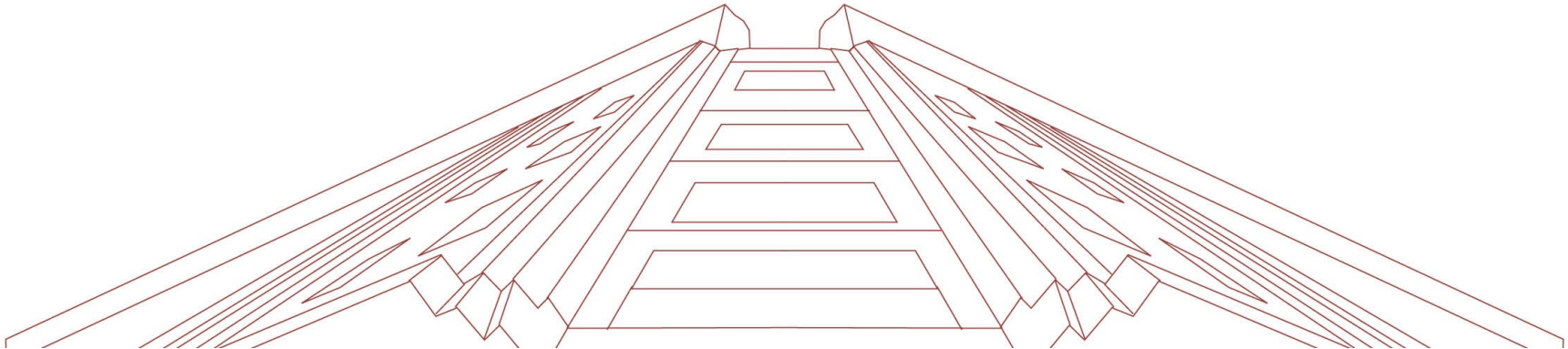

CFC RULES – Italian Approach

1. CFC RULES UNDER ITALIAN TAX LAW HAVE BEEN INTRODUCED SINCE 2001 WITH A "*JURISDICTIONAL*" APPROACH – BLACK LIST COUNTRIES INCOMES AS "*TAINTED INCOME*", IMPUTED AND TAXED AT A FIXED RATE ACCORDING TO THE PURPOSE OF ANTI TAX DEFERRAL SYSTEM.

2. ALONG THE YEARS CFC RULES HAVE BEEN WIDELY CHANGED, INTRODUCING FOR A CERTAIN PERIOD (2009-2018) ALSO A "*TRANSACTIONAL*" APPROACH FOR CFC LOCATED IN WHITE LIST COUNTRIES THE DEFINITION OF "PASSIVE INCOME", THE CONDUCT OF BUSINESS "IN THE RELEVANT MARKET" (…) INTERACTION OF DIFFERENT REGIMES – LITIGATION PURPOSES

CFC RULES – Italian Approach

3. PURSUANT TO **ATAD** ENTRY INTO FORCE, CFC RULES HAVE BEEN ADDITIONALLY AMENDED, WITH SOME RELEVANT CHANGES (*I.E. INCLUSION WITHIN THE SCOPE OF LAW OF THE PE IN ITALY OF NON RESIDENT ENTITIES*). MORE IN GENERAL, CFC RULES NOW APPLICABLE IN ITALY REFLECTS PARTIALLY ATAD RULES, AND PARTIALLY THE DEVELOPMENT OF SEVERAL CHANGES IN THE LAW CONCERNING CFC OR INCOMES FROM BLACK LIST (*I.E. DIVIDENDS FROM BLACK LIST COUNTRIES ARE CURRENTLY TAXED AT 50% UNDER CERTAIN CONDITIONS*).
4. THESE ARE THE BASICS OF CURRENTLY APPLICABLE CFC RULES:
   - CONTROL OF THE NON RESIDENT ENTITIES, WHICH MEANS ALTERNATIVELY RIGHT TO 50% VOTING RIGHTS OR RIGHT TO 50% OF PROFIT RIGHTS;
   - EFFECTIVE TAXATION OF THE NON RESIDENT ENTITIES BELOW THE 50% OF ITALIAN TAXATION (SEE PROVV. 16/9/2016 FOR CFC LEVEL OF TAXATION)
   - MORE THAN 1/3 OF THE PROCEEDS REALIZED BY THE NON RESIDENT ENTITY IS QUALIFIED AS *"PASSIVE INCOME"*

CFC RULES – Italian Approach

5. DEFINITION OF CONTROL: ALSO PROFIT RIGHT TO >50% IMPLIES THE INVOLVEMENT INTO THE SCOPE OF APPLICATION OF SITUATION OF NON-EQUITY INVESTMENT/FUND STRUCTURE/CARVE OUT OF CONSOLIDATED GROUPS → POTENTIAL INVOLVEMENT OF EARN-OUT STRUCTURES? → NOT IN CASE OF CONTROLLED ITALIAN ENTITY WITH NO CONTROLLING INTEREST IN THE CFC
   - ⇒ DE-MULTIPLYING EFFECT ON PROFIT RIGHTS
   - ⇒ NO JOINT VENTURES (*I.E. COMMON CONTROL*)

6. EFFECTIVE LEVEL OF TAXATION:
   - ALL TAXES BORNE BY THE FOREIGN ENTITY (ALSO LOCAL TAXES) BUT ON INCOME EVEN IF NOT INCLUDED IN THE DTT); EXCLUDED ANY TAX CREDIT FOR INCOMES REALIZED ABROAD.
   - ITALIAN TAX: IRES (NOT IRAP), EXCLUDED FOREIGN TAX CREDIT FOR INCOMES REALIZED ABROAD;
   - EFFECTIVE FOREIGN TAXATION: FOREIGN TAX/EBT RESULTING FROM CFC F/S.

CFC RULES – Italian Approach

7. EFFECTIVE LEVEL OF TAXATION (FURTHER POINTS OF ATTENTION):
   - IF THE CFC APPLIES IFRS, ALSO THE RESIDENT ITALIAN TAXPAYER SHALL APPLY IFRS (NOT EXPLOITED THE REVERSE CASE, EXCEPT ANSWER 2,5 CIRCULAR 23/2011).
   - FOREIGN TAXES EFFECTIVELY PAID AND MENTIONED IN THE RELEVANT TAX RETURN AND F/S;
   - IN CASE OF GROUP TAXATION OF THE CFC, REDUCTION TO SINGLE ENTITY TAXATION;
   - CONSIDERED NOTIONAL INTEREST DEDUCTION AS APPLICABLE IN ITALY OR ANALOGOUS REGIME IN THE CFC TERRITORY; NOT RELEVANT *"ELECTIVE REGIMES"* TO WHICH THE CFC WOULD BE ENTITLED TO, IF IT WAS AS ITALIAN RESIDENT;
   - DIVIDENDS AND CAPITAL GAIN PARTICIPATION EXEMPTION IN CFC COUNTRY IS QUALIFIED AS EQUIVALENT TO A FULL EXEMPTION WITH INDEDUCTIBILITY OF PARTICIPATION COSTS;
   - DORMANT COMPANY RULES NOT APPLICABLE ANYMORE TO CFC EFFECTIVE TAXATION, NOR WHEN THE ENTITY IS QUALIFIED AS SUCH; NOT IN THE STAGE OF CALCULATION OF VIRTUAL DOMESTIC TAX RATE

CFC RULES – Italian Approach

- TIMING DIFFERENCES GENERALLY NOT RELEVANT, SAVE THE TIMING THAT ARE DERIVING FROM PAST APPLICATION OF CFC RULES;
- C/FWD LOSSES IS TAKEN INTO CONSIDERATION WITHOUT ITALIAN OR LOCAL LIMITATION.

8. PASSIVE INCOME:
   a) INTEREST, ROYALTIES, DIVIDENDS AND FINANCIAL LEASING PAYMENTS;
   b) INCOMES FROM BANKING, INSURANCE AND FINANCIAL ACTIVITIES:
      - ✓STILL APPLICABLE THE PRINCIPLES SET OUT IN CIRCULAR 23/2011, WHEREBY THE EFFECTIVE FINANCIAL ACTIVITY WOULD PERMIT TO DIS-APPLY THE PASSIVE INCOME TEST? SUCH STATEMENT APPLIED TO CFC NON BLACKLIST…;
      - ✓THE EXCLUSION FOR INSURANCE COMPANIES OF DIVIDENDS AND INTEREST ARISING FROM MANAGEMENT OF PORTFOLIO INVESTMENTS FOR TECHNICAL RESERVES, ADMISSIBLE IF THE COUNTRY OF THE CFC HAS WITH ITALY EXCHANGE OF INFORMATION;
      - ✓FOR ALL CASES UNDER LETTER B), THE RULING FOR DISAPPLICATION OF CFC RULES UNDER PARAGRAPH 5 OF ART. 167 CTA IS ADVISABLE.

CFC RULES – Italian Approach

c) PROCEEDS DERIVING FROM SUPPLY OF GOODS OR SUPPLY OF SERVICES WITH LOW VALUE ADDED CARRIED OUT WITH GROUP COMPANIES:

- ✓UNCERTAINTY CONCERNING THE NATURE OF THE LAW ADDED VALUE SERVICES; REFERENCE SHOULD BE MADE TO MIN. DECREE OF MAY 14, 2018 (SUPPORT ACTIVITY, NOT PART OF MAIN ACTIVITY OF THE MNE GROUP, NOT INVOLVING INTANGIBLE OR RELEVANT ASSETS, NOT INVOLVING A RISK FOR THE SERVICER) DOUBTS STILL EXIST ON RECHARGE OF GROUP SERVICES;
- ✓ONUS OF EVIDENCE IN THE HANDS OF THE TAXPAYER: AGAINST ECJ JURISPRUDENCE.

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TRANSFER PRICING and CRIMINAL RISK

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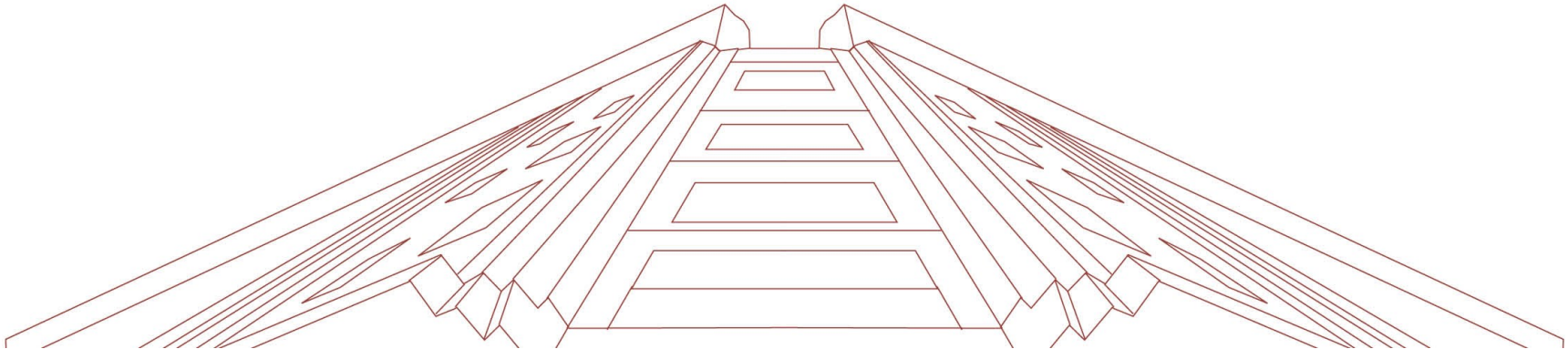

TRANSFER PRICING and CRIMINAL RISK

1. TRANSFER PRICING LAW FRAMEWORK IN ITALY IS BASED UPON SOME PROVISIONS CONTAINED IN CONSOLIDATED TAX ACT (ART. 9, ART. 110 PARA. 287…) INTO ALL DOUBLE TAX TREATIES SIGNED BY ITALY UNDER ART. 9 **DTT** (MOST OF ITALIAN **DTT** ARE BASED UPON OECD MODEL 1977) AND ART. 26 OF LAW DECREE 78/2010.

2. THE FIRST PROVISIONS CITED REFER TO ARM'S LENGTH VALUE END ENTAIL THE NECESSITY TO VALUE ACCORDING TO SUCH PRINCIPLE ANY TRANSACTION CARRIED OUT WITHIN GROUP OF COMPANIES – DOMESTIC PROVISIONS ALWAYS REQUIRE THE "*CONTROL*", WHILE DTT PROVISIONS USUALLY MAKE REFERENCE TO THE NOTION OF ASSOCIATED ENTERPRISE ("*PARTICIPATE IN THE MANAGEMENT, CONTROL OR CAPITAL*").

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TRANSFER PRICING and CRIMINAL RISK

3. THE PROVISIONS SET FORTH UNDER ART. 26 OF LAW DECREE No. 78/2010 EXPLICITY INTRODUCE UNDER ITALIAN TAX FRAMEWORK A PENALTY PROTECTION IN CASE THE TAXPAYER "*DELIVERS TO THE TAX AUTHORITIES DURING THE TAX INSPECTIONS*" THE TRANSFER PRICE DOCUMENTATION (MASTERFILE OR COUNTRYFILE DEPENDING UPON THE SPECIFIC SUBJECTIVE CIRCUMSTANCES).

4. THE PENALTIES TO WHICH ART. 26 REFERS ARE THE ONES MENTIONED UNDER LAW DECREE No. 471/1997 – ADMINISTRATIVE PENALTIES FROM 90 TO 180% OF THE HIGHER TAXES DUE; SHOULD TRANSFER PRICING DOCUMENTATION BE DELIVERED DURING TAX INSPECTION (RATHER "*CHECKING THE BOX IN THE TAX RETURN*"), THEN SUCH PENALTIES ARE NOT APPLICABLE. [REF. REG. COURT LOMBARDY No. 5225/9/2018, REG. COURT LOMBARDY No. 2454/1/2017]

TRANSFER PRICING and CRIMINAL RISK

5. THE PROTECTION THUS APPLIES AS FAR AS ADMINISTRATIVE PENALTIES ARE CONCERNED. ITALIAN LEGISLATION PROVIDES, IN THIS RESPECT, UNDER LAW DECREE No. 74/2000, CRIMINAL PENALTIES (IN ADDITION TO ADMINISTRATIVE PENALTIES) APPLICABLE TO THE PERSON SIGNING THE RELEVANT TAX RETURN IN CASE OF…

6. "*UNFAITHFUL TAX RETURN*" ART. 4 OF LAW DECREE No. 74/2000: WHEREBY THE TAX *"EVADED"* IS HIGHER THAN 100.000,00€ AND *"THE ACTIVE ELEMENTS SUBTRACTED FROM TAXATION (…) IS HIGHER THAN 10% OF TOTAL ACTIVE ELEMENTS*".

TRANSFER PRICING and CRIMINAL RISK

7. SUCH PROVISION, PURSUANT TO A FIRST AMENDMENT OF 2015, DOES NOT APPLY IF THE "*PASSIVE ELEMENTS*" (*I.E. "COSTS"*) ARE "*EXISTING*" → "*REAL*". (PARA. 1 OF ART. 4)

   IN ADDITION, FOR THE APPLICATION OF THE THRESHOLD SEEN ABOVE, IT MUST BE CONSIDERED THAT THE AUTHORITIES SHALL NOT CONSIDER (PARA. 1 BIS OF ART. 4) "*THE CORRECT CLASSIFICATION*" [*I.E. ACCOUNTING*], THE VALUATION OF ACTIVE OF PASSIVE ELEMENTS OBJECTIVELY EXISTING [*I.E. TRANSFER PRICING? SEE AFTER*] WHOSE CRITERIA MATERIALLY APPLIED HAVE BEEN MENTIONED IN THE FINANCIAL STATEMENTS OR IN ANY OTHER DOCUMENTATION RELEVANT FOR THE TAX PURPOSES [TP DOCUMENTATION], THE VIOLATION OF ACCRUAL METHOD, NON INHERENCE OF COSTS, THE NON DEDUCTIBILITY OF REAL PASSIVE ELEMENTS.

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TRANSFER PRICING and CRIMINAL RISK

8. THE SUBSEQUENT PARAGRAPH INTRODUCES AN ADDITIONAL CAVEAT SHOULD THE "*VALUATIONS*" - DIFFERENT FROM THE ONES MENTIONED ABOVE – ARE "*GLOBALLY*" (NEW VERSION AFTER FINANCE BILL FOR 2020 – BEFORE THEN IT WAS "*SINGULARLY*") NOT DIFFERENT OF MORE THAN 10% FROM THE ONES RESULTING FROM THE ASSESSMENT.

9. ACCORDING TO THE ABOVE RECONSTRUCTION, THE CRIMINAL PENALTIES APPEAR GENERALLY NOT APPLICABLE TO TRANSFER PRICING CASES WHEREBY:
   - SUCH *"VALUATIONS"* CONSIST OF HIGHER COSTS AND NOT HIGHER INCOMES ("*REAL PASSIVE ELEMENTS*")
   - SUCH "*VALUATIONS*" HAVE BEEN MENTIONED IN THE F/S OR IN THE TP DOCUMENTATION
   - IN ANY CASE, WHEREBY THEY "*GLOBALLY*" (BUT THE PROVISION APPLY FOR EACH FISCAL YEAR) DO NOT EXCEED 10% FROM THE ONES RESULTING FROM THE ASSESSMENT

TRANSFER PRICING and CRIMINAL RISK

10. CRITICAL ISSUES:
    - PENALTY PROTECTION OF TRANSFER PRICING DOCUMENTATION DOES NOT COVER THE CASE WHEREBY THE COST IS DEEMED NOT INHERENT (SAVE FOR CRIMINAL PENALTIES – SEE ABOVE PARA. 1-BIS)
    - THE RULE OF ART. 4 LAW DECREE No. 74/2000 APPEARS NOW "*LOCKING OF A CONCRETE SCOPE OF APPLICATION AS TO PASSIVE REAL ELEMENTS*" (COLLECTION OF SUPREME COURT, REL. No. III/05/2015 OF OCTOBER 28, 2015)
    - RISK IS THAT TAX AUTHORITIES QUALIFIES THE TRANSFER PRICING COSTS AS "*NOT EXISTING*" → THUS SLIDING FROM ART. 4 OF LAW DECREE 74/2000 TO PRECEDING ART. 2 → NO THRESHOLDS AND CRIMINAL PENALTIES ALWAYS APPLICABLE
    - NEW INSERTION OF CRIMINAL VIOLATIONS UNDER ART. 2 LAW DECREE No. 74/2000 WITHIN THE SCOPE OF LEG. DECREE No. 231/2001, WOULD INVOLVE A "*DOMINO EFFECT*" IN CASE THE PRECEDING INTERPRETATION WOULD BE APPLICABLE
    - PILLAR ONE/PILLAR TWO: ADDITIONAL INCOME (AND NOT COSTS) DUE TO "*AUTOMATIC ALLOCATION*" AND/OR "*INCOME INCLUSION*".

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CONTRIBUTION OF MAJORITY STAKES

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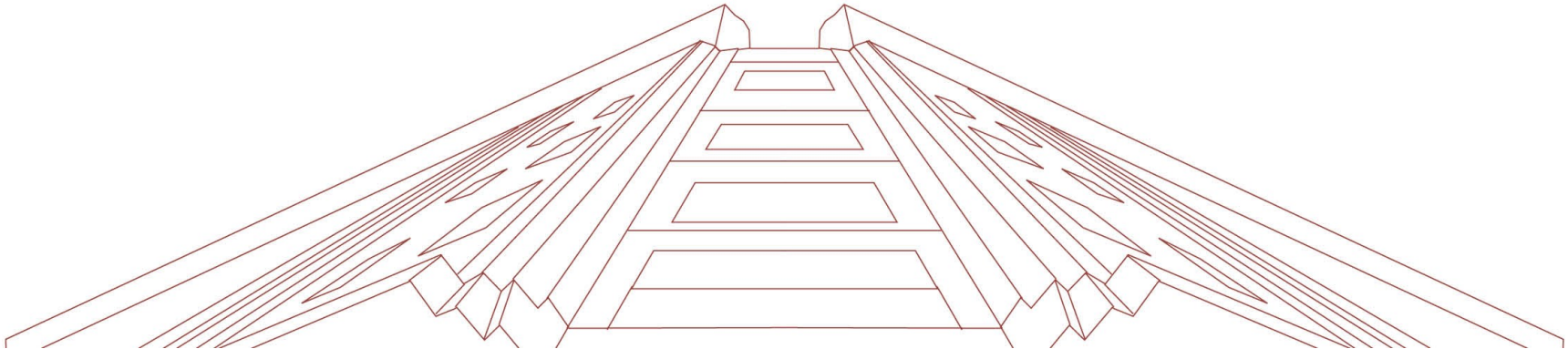

CONTRIBUTION OF MAJORITY STAKES

1. Art. 175 and 177, ITC: domestic rules. Art. 178 and 179: contributions involving EU companies. In some cases, domestic rules are also applicable to contributions involving non resident companies.

2. ITA1 contributes ITA2 to ITA 3 (art. 175 and 177, ITC). No taxable capital gain if the increase in the equity of ITA3 is equal to the tax value of ITA2 in ITA1.

3. ITA1 contributes FR to ITA2. Art. 179, ITC, is applicable because the contributed company (FR) and the receiving company (ITA2) are resident in two different EU countries (France and Italy). No taxable capital gain.

CONTRIBUTION OF MAJORITY STAKES

4. ITA1 contributes ITA2 to FR. Art. 179, ITC, is applicable because the contributed company (ITA2) and the receiving company (FR) are resident in two different EU countries (Italy and France). No taxable capital gain.

5. ITA1 contributes FR1 to FR2. Art. 179, ITC, is not applicable because the contributed company (FR1) and the receiving company (FR2) are resident in the same EU country (France). Art. 175 and 177, ITC, are not applicable because the receiving company (FR2) is not resident in Italy. The capital gain is calculated with reference to the market value and is taxable. If the PEX (participation exemption) regime is applicable the capital gain is taxable for a 5% of its amount, with a tax burden of 1,2% (5% x 24%). If the PEX regime is not applicable the capital gain is fully taxable.

CONTRIBUTION OF MAJORITY STAKES

6. ITA1 contributes NONEU to ITA2. Art. 179, ITC, is not applicable because the contributed company (NONEU) is not resident in the EU. Art. 177, ITC, is not applicable because the contributed company (NONEU) is not resident in Italy. Art. 175, ITC, is applicable because both the contributing company (ITA1) and the receiving company (ITA2) are resident in Italy. The capital gain is calculated considering the higher between the book value of ITA2 in ITA1 and the book value of NONEU in ITA2. If the PEX (participation exemption) regime is applicable the capital gain is taxable for a 5% of its amount, with a tax burden of 1,2% (5% x 24%). If the PEX regime is not applicable the capital gain is fully taxable.

CONTRIBUTION OF MAJORITY STAKES

7. ITA1 contributes NONEU to FR. Art. 179, ITC, is not applicable because the contributed company (NONEU) is not resident in the EU. Art. 177, ITC, is not applicable because both the contributed company (NONEU) and the receiving company (FR) are not resident in Italy. Art. 175, ITC, is not applicable because the receiving company (FR) is not resident in Italy. The capital gain is calculated with reference to the market value and is taxable. If the PEX (participation exemption) regime is applicable the capital gain is taxable for a 5% of its amount, with a tax burden of 1,2% (5% x 24%). If the PEX regime is not applicable the capital gain is fully taxable.

CONTRIBUTION OF MAJORITY STAKES

8. ITA1 contributes ITA2 to NONEU. Art. 179, ITC, is not applicable because the receiving company (NONEU) is not resident in the EU. Art. 175 and 177, ITC, are not applicable because the receiving company (NONEU) is not resident in Italy. The capital gain is calculated with reference to the market value and is taxable. If the PEX (participation exemption) regime is applicable the capital gain is taxable for a 5% of its amount, with a tax burden of 1,2% (5% x 24%). If the PEX regime is not applicable the capital gain is fully taxable.

CONTRIBUTION OF MAJORITY STAKES

9. ITA1 contributes FR to NONEU. Art. 179, ITC, is not applicable because the receiving company (NONEU) is not resident in the EU. Art. 177, ITC, is not applicable because both the contributed company (FR) and the receiving company (NONEU) are not resident in Italy. Art. 175, ITC, is not applicable because the receiving company (NONEU) is not resident in Italy. The capital gain is calculated with reference to the market value and is taxable. If the PEX (participation exemption) regime is applicable the capital gain is taxable for a 5% of its amount, with a tax burden of 1,2% (5% x 24%). If the PEX regime is not applicable the capital gain is fully taxable.

CONTRIBUTION OF MAJORITY STAKES

10. ITA1 contributes NONEU1 to NONEU2. Art.179, ITC, is not applicable because both the contributed company (NONEU1) and the receiving company (NONEU2) are not resident in the EU. Art. 177, ITC, is not applicable because both the contributed company (NONEU1) and the receiving company (NONEU2) are not resident in Italy. Art. 175, ITC, is not applicable because the receiving company (NONEU2) is not resident in Italy. The capital gain is calculated with reference to the market value and is taxable. If the PEX (participation exemption) regime is applicable the capital gain is taxable for a 5% of its amount, with a tax burden of 1,2% (5%x24%). If the PEX regime is not applicable the capital gain is fully taxable.

CONTRIBUTION OF MAJORITY STAKES

11. FR (with no PE in Italy) contributes ITA1 to ITA2. Art. 179, ITC, is not applicable because both the contributed company (ITA1) and the receiving company (ITA2) are resident in the same EU country (Italy). Art.175, ITC, is not applicable because the contributing company (FR) is not resident in Italy. Art. 177, ITC, is applicable because both the contributed company (ITA1) and the receiving company (ITA2) are resident in Italy. No taxable capital gain if the increase in the equity of ITA2 is equal to the tax value of ITA1 in FR. If a capital gain arises the PEX regime is not applicable (other income and not business income) and the same capital gain is fully taxable. The taxation in Italy of the capital gain can be avoided according to art.13, paragraph 4, of the Tax Treaty between France and Italy. However, according to art. 8, paragraph b), of the Protocol of the Treaty Italy can tax the capital gain deriving from a substantial shareholding (right to at least 25% of the profit of ITA1).

CONTRIBUTION OF MAJORITY STAKES

12. FR1 (with no PE in Italy) contributes FR2 to ITA. Art. 179, ITC, is applicable because the contributed company (FR2) and the receiving company (ITA) are resident in two different EU countries (Italy and France). No taxable capital gain, also because it is not considered as produced in Italy (i.e. no territoriality).

CONTRIBUTION OF MAJORITY STAKES

13. FR1 (with no PE in Italy) contributes ITA to FR2. According to the Directive the capital gain should not be taxable because the contributed company (ITA) and the receiving company (FR2) are resident in two different EU countries. However art. 178 and 179, ITC, state that at least one of the subjects who make the exchange must be resident in Italy. In this case FR1 and FR2 are not resident in Italy (violation of the Directive?). Art. 175, ITC, is not applicable because both the contributing company (FR1) and the receiving company (FR2) are not resident in Italy. Art. 177, ITC, is not applicable because the receiving company (FR2) is not resident in Italy. The capital gain is calculated with reference to the market value. The PEX regime is not applicable (other income and not business income) and the same capital gain is fully taxable. The taxation in Italy of the capital gain can be avoided according to art. 13, paragraph 4, of the Tax Treaty between France and Italy. However, according to art. 8, paragraph b), of the Protocol of the Treaty Italy can tax the capital gain deriving from a substantial shareholding (right to at least 25% of the profit of ITA1).

CONTRIBUTION OF MAJORITY STAKES

14. FR (with no PE in Italy) contributes ITA to NONEU. Art. 179, ITC, is not applicable because the receiving company (NONEU) is not resident in the EU. Art. 175, ITC, is not applicable because both the contributing company (FR) and the receiving company (NONEU) are not resident in Italy. Art. 177, ITC, is not applicable because the receiving company (NONEU) is not resident in Italy. The capital gain is calculated with reference to the market value. The PEX regime is not applicable (other income and not business income) and the same capital gain is fully taxable. The taxation in Italy of the capital gain can be avoided according to art. 13, paragraph 4, of the Tax Treaty between France and Italy. However, according to art. 8, paragraph b), of the Protocol of the Treaty Italy can tax the capital gain deriving from a substantial shareholding (right to at least 25% of the profit of ITA1).

CONTRIBUTION OF MAJORITY STAKES

15. Other issues:

- Income taxes applicable in the country of residence of the contributed companies

- Indirect/transfer taxes

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ANTIAVOIDANCE RULES AFTER ATAD

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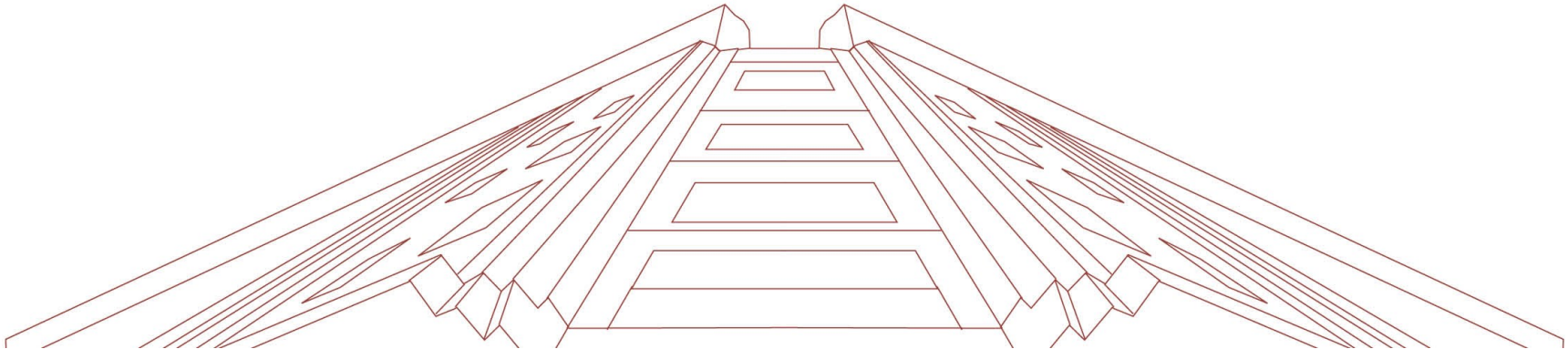

ANTIAVOIDANCE RULES AFTER ATAD

1. Previous Italian regime: art. 37-bis, Presidential Decree no. 600/73, covered only the transactions mentioned in the same article (mainly, business restructuring). The definition of “abuse of law” provided by art. 37-bis was quite broad (and not so clear) and caused several disputes with the Italian Tax Authorities.

2. The new antiavoidance rule (art. 10-bis, Law no. 212), in force starting from 2015, is a general rule which covers all the cases and all the taxes (i.e.: income tax, indirect taxes, etc.). Art. 10-bis gives a more accurate definition of “abuse of law”. The concept of abuse of law is ‘residual’, *i.e.* applies only when a transaction cannot be assessed under other specific rules.

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ANTIAVOIDANCE RULES AFTER ATAD

3. In particular, art. 10-bis focuses on three main elements:

   i) transactions devoid of economic substance;

   ii) which reap undue tax advantages despite formally respecting the law;

   iii) such tax advantages are the essential effect of the transaction.

   According to art. 10-bis, par. 3, operations with valid non-fiscal underpinnings (including reorganizations or management decisions to improve the structure or operations of a business or professional activity) are not considered abusive.

ANTIAVOIDANCE RULES AFTER ATAD

4. According to the new rule and the interpretation of the Italian Tax Authorities (Document no. 93/E/16), if the tax advantage is not undue the antiavoidance rule is not applicable and no other conditions must be checked. With this reference, paragraph 4 of art. 10-bis grants the freedom of choice between optional regimes and operations bearing a different tax burden. Only if the tax advantage is undue, the other conditions must be checked in order to apply the antiavoidance provision.

ANTIAVOIDANCE RULES AFTER ATAD

5. According to art. 6, paragraph 1 and paragraph 2, of "ATAD" 1 (EU Anti-Tax Avoidance Directive no. 2016/1164), "*a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. (..) An arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality*".

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ANTIAVOIDANCE RULES AFTER ATAD

6. On 28 December 2018 Legislative Decree No. 142 of 29 November 2018 ("LD 142/2018") has been published in Official Gazette No. 300, thus implementing "ATAD" 1. However, such Decree, as confirmed by the explanatory report, did not implement art. 6 of "ATAD" 1 because art. 10-bis was already considered in line with art. 6 of the same "ATAD 1". This view is in line with the comments of the majority of the Italian literature.

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