Dear Audience:

RE: The new two-year arrangement with creditors

In light of the innovation represented by the institution of the two-year arrangement with creditors, for the first year of application of the relevant legislation, there is an extended deadline for taxpayers to adhere to the composition.

This deadline of October 15th 2024 coincides with tax return filing for the 2023 tax period.

Arranged obligations:

The Agency, also based on collected data from the taxpayer through specific computer programs, draws up the arrangement proposal and sends it to the interested party, who can adhere by the 30th of June of each year.

For the first implementation year of this procedure, these deadlines are postponed to October 15th 2024.

It will probably be necessary to send the ISA (Summary Reliability Indices) data in advance, since it is expected that the proposal will be drawn up by the Agency "in line with the data declared by the taxpayer" and considering the "individual and sectoral profitability that can be deduced from the summary reliability indices (-) and the results of their application". Further information is likely to be required, since Article 8 of the Decree-law does not specify ISA data as being "necessary for the preparation of the proposal".

This implementation of the two-year arrangement with creditors is also valid for taxpayers under the flat-rate regime, who, although are not subject to ISAs, will probably have to provide the Agency with the data necessary to prepare the composition proposal.

The composition proposal will be entrusted to special computer programs that the Revenue Agency will make available to taxpayers and intermediaries by June 15th for 2024 and by April 15th for 2025.

In addition, it is envisaged that, in order to prepare the proposal, the Revenue Agency will acquire not only the data declared by the taxpayer, but also additional information from the databases available to the tax administration and other public bodies, the results of which should already be included in the software.

In methodological terms, therefore, there will be no letters of proposal sent by the Revenue Agency, but an interaction with the taxpayer will be required, who will have to familiarize with a specific software created for the occasion.

The relationship with ISAs:

Another point clarified in the final version of the legislation in question concerns the relationship with the ISA vote obtained by the taxpayer. No predefined threshold has been established, thus eliminating the original requirement for a vote of at least 8 to join the two-year arrangement with creditors.

In essence, taxpayers who use ISAs, in response to the observations of the Finance Committee of the Chamber of Deputies (letter f) and the Finance and Treasury Committee of the Senate, can receive a proposal for a two-year arrangement with creditors regardless of the score obtained with the application of the ISAs themselves.

Maximums and contradictories:

No ceiling has been set by law; therefore, the calculation of the income proposed by the Revenue Agency for the composition depends on the software. The proposed amendment to limit the calculation of the agreed income to 10% of the taxable earnings of the reference year was not approved.

According to the report attached to the decree, the composition proposal does not require any prior negotiations between the taxpayer and the Revenue Agency.

It should be noted that the software in charge of the calculation is based on the data declared by the taxpayer and respects his ability to pay, overcoming the objections of the VI Commission (Finance) of the Chamber of Deputies.

The formalization of the adhesion to the composition must take place through an electronic communication sent by the taxpayer (and their intermediaries) to the Revenue Agency.

According to the explanatory report attached to the legislative decree on the assessment, the entire process will be regulated through a Provision of the Director of the Revenue Agency, which will establish the data and procedures that the beneficiaries will have to follow. According to the Government, this IT approach makes it possible to simplify the operation of the institute as much as possible, ensuring a wide participation of taxpayers.

The new Article 20 of the decree provides that the advance payment due for 2024 will be calculated considering the agreed income.

For the first tax period in which the two-year Composition with Creditors applies (tax year 2024), if the down-payment is made in two instalments, the second instalment (expiring on November

30th 2024) must be calculated as the difference between the total advance payment due on the basis of the agreed income and net production value and the amount already paid with the first instalment, calculated according to standard rules.

Essentially, we move from the historical method to a calculation based on the "new" agreed income. This is because the two-year arrangement with creditors has already been adhered to, which, for the first year, must be communicated by October 15th 2024, the date of submission of the tax return.

Subsequently, in the case of adherence to the composition, the advance payment due is calculated considering taxes from previous years which would have been determined taking into account the income and the value of net production agreed for the tax period in which the advance payment is due. Therefore, for 2025, the agreed income will be taken into account with the first down payment.

The fundamental prerequisite to access the two-year arrangement with creditors (for flat-rate mortgages, membership is currently limited to the year 2024 only) is that the interested party is subject to ISAs.

Regulation does not specify the year in which the applicability of ISAs to the potential composition entity has to be verified, but it is reasonable to assume that this must take place in the period prior to the one in which the agreement begins (therefore, for the 2024/2025 composition, the ISAs must be applicable in 2023). This is because the 2023 Isa analysis forms the basis of the composition proposal that will be evaluated for the two-year period 2024/2025.

Article 10 of the decree in its final version speaks of entities that apply ISAs (instead of "taxpayers to whom the summary reliability indices are applicable"), therefore, following this clarification, the two-year arrangement with creditors is not accessible to anyone who is in one of the situations of exclusion provided.

There are several reasons for exclusion from ISAs (the instructions to the tax returns identify a total of 15), but the main ones concern the start or closure of the activity during the year and the exceeding of the threshold of revenues (or fees) provided for the application of the statistical tools; the presence of a period of non-normal performance of the activity; the determination of income using flat-rate criteria.

We remind you that taxpayers excluded from ISAs are not required to fill in and send the ISA form, except for "multi-activity" taxpayers.

A particular form of exclusion from ISAs concerns the "period of non-normal performance of the activity", a condition not explicitly defined by the legislation.

However, the instructions for declaratory models have identified some illustrative situations.

Among the circumstances mentioned by the Revenue Agency are:

- the period in which the company has not yet started production;
- the period in which the activity was interrupted (for the entire tax period) due to the renovation of the premises in which the activity is carried out;
- the period in which the only company was rented; the period in which the activity was suspended with communication to the Chamber of Commerce;
- the change of the activity during the year, unless the two activities (the one ceased and the one started) are identified by activity codes included in the same ISA.

A common case of exclusion from ISAs involves entities defined as "multi-activity". These entities carry out two or more business activities that are not covered by the same ISA, if the revenues of secondary activities exceed 30% of the total revenues.

Even if technically excluded from ISAs, they still have to fill in the ISA template with the "multi-activity" statement for statistical purposes, without impacting the reliability score. Multi-activity entities, despite the submission of the form, remain excluded from ISAs and, therefore, cannot access the two-year composition with creditors.

Often, multi-activity subjects are more common than you might think, although not always easily identifiable. Flat-rate entities are excluded from ISAs, but can access the arrangement with creditors as required by law. However, for 2024, not through a two-year agreement, but with an annual effect and on an experimental basis. It is important to understand the meaning of this clarification.

The rule specifies that flat-rate entities that have started their activity in the year prior of the effective entry to the composition with creditors cannot access the two-year arrangement. Therefore, for the 2024 experimental arrangement, the cut-off applies to flat-rate companies that started their activity during 2023.

The two-year arrangement with creditors ceases to be effective if one of the two conditions set out in Article 21 of the decree is met. The first concerns the case of the modification of the activity carried out in the agreed two-year period compared to that carried out in the tax period preceding the same two-year period if different ISAs are applied.

The second, cease of activity during the two-year period. With the termination of the composition with creditors, the subject returns to having to tax the income and the value of net production actually made, with the consequent irrelevance of the values accepted with the composition proposal.

In the two-year composition with creditors, the amount proposed for companies takes into account the income determined by the TUIR (Income Tax Consolidation Act) rules based on the type

of entity involved: a company in ordinary accounting, a company in simplified accounting or a corporation subject to IRES (corporate income tax).

Capital gains and losses, as well as participation income, are not included in the initial calculation and will be managed separately. Tax losses carried forward from previous periods can be deducted, but the taxable amount cannot fall below €2.000 per year.

Rules and exceptions:

Article 16 of the tax assessment reform establishes the rules for calculating the business income proposed to taxpayers who fall under the two-year arrangement with creditors. For companies subject to personal income tax in ordinary accounting (such as sole proprietorships, general partnerships and joint-stock companies), the income indicated in the assessment proposal will be calculated on the basis of Article 56 of the Income Tax Code.

Smaller companies in simplified accounting will take into account the concept of income defined in Article 66 of the Income Tax Code, while for companies subject to IRES (such as limited liability companies) reference will be made to the specific provisions of Articles 81 and following.

The income proposed to taxpayers will not include certain positive and negative elements such as capital gains (Articles 58, 86 and 87 of the Income Tax Code) and contingent assets (Article 88 of the Income Tax Act), as well as capital losses and contingent liabilities (Article 101 of the Income Tax Act). In addition, income deriving from participation in "transparent" companies referred to in Article 5 of the Income Tax Act and in corporations referred to in Article 73 will be excluded from the proposed income only if the related shareholdings are related to the company's activity.

Since these non-recurring items are not included in the amount proposed by the tax agency, they will need to be added or subtracted to calculate the amount of agreed income subject to taxation.

Past losses:

The third paragraph of Article 16 provides for the application of the provisions on carry-forward to offset tax losses also for those who adhere to the arrangement. The taxpayer will be able to reduce the proposed and adjusted taxable amount with the mentioned components, reporting the losses according to the rules of Article 8 (for IRPEF companies) or Article 84 (for corporations) of the TUIR.

However, the adjustments to the income proposed by the tax authorities (extraneous components and losses) will not be able to reduce the company's taxable income below 2,000 euros, the amount on which the tax will have to be applied.

In the case of "transparent" entities (partnerships and transparent corporations according to Articles 115 and 116 of the Income Tax Code), this minimum limit will be divided among the individual shareholders on the basis of their respective shares in the profits.

IRAP and VAT:

Similar rules apply to quantify the agreed taxable amount subject to IRAP. According to Article 17 of the Legislative Decree, the proposed amount takes into account the value of production identified according to Articles 5 (corporations), 5-bis (personal income tax companies) and 8 (professionals) of Digs 446/1997.

Similarly to income taxes, also for IRAP(regional production tax), capital gains, losses, contingent assets and liabilities, for which the law does not provide a precise definition, are not included in the proposed amount. Joint-stock companies that calculate IRAP derived from the financial statements must follow the rules of accounting standards, while other companies must refer to the corresponding definitions of the TUIR.

The two-year arrangement with creditors does not affect the determination of value added tax, as established by Article 17 of the Legislative Decree. Any higher income than the accounting income will not result in an increase in the VAT to be paid.

For professionals in composition with creditors, the income proposed by the Revenue Agency must be adjusted by adding or subtracting capital gains and losses relating to capital goods. After accepting the two-year composition proposal, self-employed persons (such as artists and professionals) must make any adjustments to calculate the actual agreed taxable amount on which personal taxes are applied.

According to Article 15 of the new legislative decree on assessment, similar to what is provided for companies, the amount calculated by the Revenue Agency takes into account the income identified by Article 54 of the TUIR (compensation received minus costs paid and deductible), excluding capital gains and losses relating to capital goods (as indicated in paragraphs 1-bis and 1-bis.1 of Article 54) deriving from the sale, compensation also in the form of insurance for the loss of capital goods, or (only for capital gains) from self-consumption or use of the asset for non-professional purposes.

If the professional or the associated firm owns shareholdings that are part of professional assets, it is also necessary to consider the income or shares of income relating to shareholdings in partnerships and associations as indicated in Article 5 of the Income Tax Code. This income may have been settled by means of a two-year arrangement with creditors.

The mentioned corrections will help determine the final agreed income with the Internal Revenue Service. For professionals, the law sets a minimum income of €2,000. For example, if the

composition proposal is €35,000 and the professional has suffered capital losses from the sale of capital goods of €34,000 (with a net balance of €1,000), the taxable income agreed as income from self-employment will be set at €2,000.

This threshold is divided among the individual partners in the case of associated firms, based on the percentages of profit sharing. In the event that the professional is subject to IRAP, carrying out the activity in an associated form, the composition will also have effects on IRAP.

Article 17 of the legislative decree refers to the value of production as defined by Article 8 of Digs 446/1997, with the addition of the balance of capital gains and losses and with a minimum taxable amount of 2,000 euros.

Palermo, Rome, 3rd April 2024

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