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To who it may concern

Of counsel

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Reggio Emilia, March 20, 2024

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MEMORANDUM N. 19/2024

Insight

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Subject: Tax credit for investment transition 5.0 - New in DL 2.3.2024 No. 19

1 PREMISE

Art. 38 of DL 2.3.2024 No. 19 (so-called DL "PNRR"), published in G.U. 2.3.2024 No. 52, introduced a new tax credit for investments made in 2024 and 2025 related to the 5.0 transition plan.

Implementing provisions

A soon-to-be-issued Ministerial Decree will define the implementing provisions of the facility.

2 BENEFICIARY ENTERPRISES

Companies resident in Italy (as well as permanent establishments in Italy of nonresidents) are eligible for the facility, regardless of:

- from the legal form;
- From the economic sector to which they belong;
- by size;
- the regime for determining the company's income.

To take advantage of the benefit, companies must still meet the following conditions:

- compliance with workplace safety regulations applicable in each sector;
- proper fulfillment of obligations to pay social security and welfare contributions for the benefit of the workers.

Exclusions

Excluded are:

- companies that are in a state of voluntary liquidation, bankruptcy or other insolvency proceedings;
- companies that are the recipients of disqualification sanctions under Legislative Decree 231/2001.

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3 FACILITATED INVESTMENTS

Eligible investments are those made:

- in 2024 and 2025;
- in production facilities located in Italy;
- in new tangible and intangible assets, instrumental to business operations, as per Annexes A and B to Law 232/2016 (so-called "4.0" assets), which are interconnected to the company's production management system or supply network;
- as part of innovation projects that achieve a reduction in energy consumption.

3.1 EXTENSION OF INTANGIBLE ASSETS UNDER ANNEX B OF L. 232/2016

For the purposes of the relief under consideration, the assets referred to in the aforementioned Annex B, where specifically provided for by the innovation project, also include:

- software, systems, platforms or applications for plant intelligence that ensure the continuous monitoring and visualization of energy consumption and self-produced and self-consumed energy, or introduce energy efficiency mechanisms, through the collection and processing of data including from IoT field sensors (Energy Dashboarding);
- software related to enterprise management if purchased together with the software, systems or platforms mentioned in the previous point.

3.2 SELF-PRODUCTION OF ENERGY FROM RENEWABLE SOURCES FOR SELF-CONSUMPTION

In the context of innovation projects that achieve a reduction in energy consumption, investments in new tangible assets instrumental to business operations aimed at the self-production of energy from renewable sources for self-consumption, with the exception of biomass, including facilities for storing the energy produced, are also eligible.

With reference to the self-production and self-consumption of energy from solar sources, only systems with photovoltaic modules referred to in Art. 12 co. 1 lett. a), b) and c) of DL 9.12.2023 No. 181 are considered eligible. An increase in cost, for tax credit purposes, of 120% and 140%, respectively, is provided for investments under the aforementioned letters (b) and (c).

3.3 EXPENSES FOR EXTERNAL TRAINING

Expenditures for staff training provided for in Article 31(3) of Commission Regulation (EU) 651/2014, aimed at acquiring or consolidating skills in technologies relevant to the digital and energy transition of production processes, are also eligible for aid.

Such expenses are eligible for aid:

- up to 10 percent of the investments made in the eligible assets;
- up to a maximum of 300,000.00 euros;
- provided that the training activities are provided by external entities, identified by the implementing DM.

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3.4 EXCLUSIONS

In any case, investments intended for:

- activities directly related to fossil fuels;
- activities under the EU Emissions Trading Scheme (ETS) that generate projected greenhouse gas emissions not below relevant benchmarks;
- activities related to waste landfills, incinerators and mechanical biological treatment plants;
- activities in the production process of which a high dose of pollutants classifiable as special hazardous waste under Commission Regulation (EU) 1357/2014 is generated and whose long-term disposal could cause environmental damage.

Also excluded are investments in freely transferable assets of enterprises operating under concessions and tariffs in the energy, water, transportation, infrastructure, post, telecommunications, wastewater collection and purification, and waste collection and disposal sectors.

4 TAX CREDIT MEASURE

The measure of the tax credit varies depending on the level of reduction in energy consumption achieved through the eligible investments.

Where, by means of the facilitated investments, an overall reduction in energy consumption of the production structure located in the national territory, to which the innovation project refers, of not less than 3% or, alternatively, a reduction in energy consumption of the processes involved in the investment of not less than 5% is achieved, the tax credit is recognized to the extent of:

- 35% of the cost, for the portion of investments up to 2.5 million euros;
- 15% of the cost, for the portion of investments over 2.5 million euros and up to 10 million euros;
- 5% of the cost, for the portion of investments over EUR 10 million and up to the maximum eligible cost limit of EUR 50 million (per year, per beneficiary enterprise).

In the case of a reduction in energy consumption of the production structure located in the national territory of more than 6 percent or, alternatively, a reduction in energy consumption of the processes involved in the investment of more than 10 percent, the tax credit is recognized in the amount of:

- 40% of the cost, for the portion of investments up to 2.5 million euros;
- 20% of the cost, for the portion of investments over EUR 2.5 million and up to EUR 10 million;
- 10% of the cost, for the portion of investments over €10 million and up to €50 million (per year, per beneficiary enterprise).

In the case of reduction of energy consumption of the production structure located in the national territory of more than 10% or, alternatively, reduction of energy

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consumption of the processes involved in the investment of more than 15%, the tax credit is recognized to the extent of:

- 45% of the cost, for the portion of investments up to 2.5 million euros;
- 25% of the cost, for the portion of investments over 2.5 million euros and up to 10 million euros;
- 15% of the cost, for the portion of investments over €10 million and up to €50 million (per year, per beneficiary enterprise).

5 WAYS TO ACCESS THE BENEFIT

To access the benefit:

- companies must submit, electronically, to Gestore dei Servizi Energetici spa (GSE) the "technical" certifications, together with a communication concerning the description of the investment project and its cost;
- the GSE, after verifying the completeness of the documentation, transmits daily, by telematic means, to the Ministry of Enterprise and *Made in Italy*, the list of companies that have validly applied for the facility and the amount of credit booked, ensuring that the total amount of projects admitted to booking does not exceed the limit of expenditure provided;
- for the purposes of using the credit, the company sends periodic communications to the GSE regarding the progress of the investment admitted to the facility, in accordance with procedures to be defined by the implementing DM. Based on these communications, the amount of the tax credit that can be used is determined, up to the maximum amount booked;
- the company communicates the completion of the investment and this communication must be accompanied, under penalty of forfeiture, by the "ex post" certification;
- the GSE transmits to the Revenue Agency, by telematic methods defined in agreement, the list of beneficiary enterprises with the amount of the relevant usable tax credit.

"Technical" certifications

The benefit is subject to the submission of appropriate certifications issued by an independent evaluator, which, with respect to the eligibility of the investment project and the completion of the investments, certify:

- *ex ante*, the reduction in energy consumption achievable through the investments in the assets;
- *ex post*, the actual implementation of the investments in accordance with the *ex ante* certification.

The implementing Ministerial Decree will identify the requirements, including in terms of independence, impartiality, honorability and professionalism, of those authorized to issue certifications.

Certification expenses for SMEs

For small and medium-sized enterprises, expenses incurred in fulfilling the aforementioned certification requirement are recognized as an increase in the tax

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credit for an amount not exceeding 10,000.00 euros, subject to the maximum limit of subsidized expenses.

6 METHODS OF USING THE TAX CREDIT

The tax credit can be used exclusively by offsetting, pursuant to Article 17 of Legislative Decree No. 241/97:

- by submitting the F24 form only through the telematic services of the Revenue Agency, under penalty of rejection of the payment transaction;
- after five days from the regular transmission by GSE to the Revenue Agency of the list of beneficiaries and the credit due;
- by 31.12.2025.

The amount not yet used as of that date is carried forward and can be used in five equal annual installments.

Inapplicability of limits on offsets

The tax credit is not subject to:

- to the annual limit on the use of tax credits from the RU panel, amounting to 250,000.00 euros (art. 1 co. 53 of L. 244/2007);
- to the general annual limit of offsetting in the F24 form, equal to 2 million euros (art. 34 of L. 388/2000);
- to the prohibition of offsetting of credits related to state taxes in the presence of debts registered on the tax rolls for an amount exceeding 1,500.00 euros (Art. 31 of DL 78/2010).

Impossibility to assign/transfer the tax credit

The tax credit cannot be assigned or transferred even within the tax consolidation.

7 FISCAL IRRELEVANCE OF THE RELIEF

The tax credit:

- does not contribute to the formation of income and the IRAP tax base;
- does not count toward the determination of the pro rata deductibility of interest expense and overhead expenses, as per Articles 61 and 109 co. 5 of the TUIR.

8 REDETERMINATION OF THE RELIEF

Redetermination of the tax credit is provided if, by December 31 of the fifth year following the year of completion of the investment, the subsidized assets are:

- sold to third parties;
- intended for purposes unrelated to the operation of the enterprise;
- allocated to production facilities other than those that gave rise to the right to the facilitation, even if they belong to the same entity;
- as well as in case of failure to exercise the option for redemption in the case of assets acquired under finance lease.

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In such a case:

- the tax credit is correspondingly reduced by excluding the relevant cost from the original basis of calculation;
- the greater tax credit, if any, already used in compensation is directly reimbursed by the beneficiary within the deadline for the payment of the balance of the income tax due for the tax period in which the above assumptions occur, without the application of penalties and interest.

The provisions on substitute investments set forth in Art. 1 co. 35 and 36 of Law 205/2017 apply, insofar as they are compatible.

9 DOCUMENTATION REQUIREMENTS

In addition to the documentation required to access the benefit, there are additional documentary requirements.

9.1 RETENTION OF APPROPRIATE DOCUMENTATION

For the purposes of subsequent audits, entities availing themselves of the tax credit are required to retain, under penalty of revocation of the benefit, appropriate documentation to prove the actual incurrence and correct determination of the eligible costs.

9.2 WORDING ON INVOICES

Invoices, transport documents and other documents relating to the acquisition of the subsidized goods must contain the express reference to the provisions of Article 38 of DL 19/2024.

9.3 CERTIFICATION OF ACCOUNTING DOCUMENTATION

The actual incurrence of eligible expenses and the correspondence of the same with the accounting documentation prepared by the enterprise must be evidenced by appropriate certification issued by the person in charge of the statutory audit.

For enterprises not required by law to have a statutory audit, the certification shall be issued by a statutory auditor or auditing firm registered in Section A of the register referred to in Article 8 of Legislative Decree No. 39/2010.

For only those companies that are not required by law to have a statutory audit, the expenses incurred in fulfilling the obligation to certify accounting documents are recognized as an increase in the tax credit for an amount not exceeding 5,000.00 euros, subject, however, to the maximum limit provided for the relief.

10 RELATIONSHIP WITH OTHER FACILITIES

The Transition 5.0 tax credit cannot be combined, in relation to the same eligible costs, with:

- the *bonus* investment in capital goods referred to in Art. 1 co. 1051 ff. of L. 178/2020;

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- the single Mezzogiorno ZES investment *bonus* referred to in Art. 16 of DL 124/2023.

However, the tax credit can be cumulated with other concessions having as their object the same costs, provided that such cumulation, also taking into account the non-competition in the formation of income and IRAP taxable base, does not lead to the exceeding of the cost incurred.

The firm remains available for any clarifications.

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