REVALUATION OF STOCK OPTIONS: CLARIFICATIONS

Italian Revenue Agency ruling No. 118/2024

- ✓ With the ruling in comment, the Italian Revenue Agency provides clarifications regarding the possibility of re-evaluating the fiscal value of certain stock options pursuant to Article 5 of Law 448/2001 and subsequent amendments and integrations.

- ✓ In the case in exam, an employee of an insurance company listed among small and medium innovative enterprises from 2014 to 2021 was involved in two different assignments of stock options (with different vesting periods) following the incentive plan approved by the company's shareholders' meeting at the end of 2019. This plan provided for the free allocation to certain individuals of rights to subscribe to newly issued shares of a particular category (hereinafter the "options").

- ✓ The options held by the employee, in particular, were personal, non-transferable *inter vivos*, and could not be pledged or guaranteed to third parties, nor could they be the subject of contracts of any nature (including derivative contracts). Furthermore, they were subject to the tax regime provided for in Article 27 of Law Decree 179/2012 for incentive plans for innovative startups, a regime subsequently extended to innovative SMEs. The employee thus asked for clarification regarding the possibility of re-evaluating the purchase value of these options pursuant to Article 5 of Law 448/2001.

- ✓ The Agency, after reiterating – given the regulatory provisions and also referring to its circular No. 12/E of 31.01.2002 – the possibility of re-evaluation with reference to option rights exclusively for the purpose of determining the capital gain realized through the onerous sale of the same (pursuant to Article 67, paragraph 1, letters c) and c-bis), of Presidential Decree 917/1986), concludes by stating that it is not possible to re-evaluate the fiscal value of the options since, in the case at hand, they are not transferable to third parties and, therefore, cannot in any way generate a different income under the aforementioned letters.

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