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THE DELEGATION OF PAYMENT UNDER THE ITALIAN LAW – REGISTRATION TAX IMPLICATIONS

Pursuant to the Italian rules on the delegation of payment (Article 1269 of the Italian Civil Code), a person (the "**Delegator**") delegates a third party (the "**Delegate**") to make a payment in favor of a creditor of the Delegator himself (the "**Creditor**").

The Delegate does not assume a payment obligation vis-à-vis the Creditor, but pays the debt to the Creditor on the basis of a delegation conferred upon him by the Delegator, with legal effects for the latter.

This is the case, for instance, in the context of real estate sales, where the seller delegates the buyer to pay the purchase price of the property (in whole or in part) to the bank to which the seller owes a debt.

With reference to the legal effects:

- the payment made by the Delegate is attributable, for any legal purpose, to the Delegator; and, consequently,
- with the Delegate's payment, the Delegator is released from the obligation to pay the Creditor.

From a tax point of view, the written agreement on the delegation of payment is subject to registration in a fixed term and subject to the registration tax at a rate of 3%, since it is a deed concerning transactions of an economic nature (as per Article 9 of the Tariff, Part I, annexed to the Italian Presidential Decree 131/86).

However, the aforesaid provision does not apply if the delegation of payment, instead of constituting an autonomous provision, is included in a different contract and constitutes (even partially) a method of fulfilling an obligation, as confirmed by the practice of the Italian Tax Authority and the relevant case law.

In this respect, the Revenue Office of Lombardy (an Italian administrative region) has pointed out that, where the delegation of payment is included in a contract of sale and is construed as a method of payment of the price, such delegation of payment should not be subject to autonomous taxation.
This view has also been expressed by Italian case-law (judgment no. 951/2017 of the Provincial Tax Commission of Pesaro).

It is, therefore, necessary to pay the utmost attention to the configuration of an agreement which provides for the delegation of payment vis-à-vis third parties, also in view of the consequent tax implications.