



## THE DEDUCTIBILITY OF SO CALLED BLACK LIST COSTS



The Italian 2023 Budget Law reintroduced the so-called 'black list costs' rules.

The aforesaid rules limit the possibility for Italian companies to deduct for tax purposes the costs arising from transactions with companies resident - or professionals domiciled - in foreign non-cooperative Jurisdictions as per Annex 1 to the EU list adopted by the Council of the European Union (i.e. American Samoa, Anguilla, Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, Turks and Caicos Islands, United States Virgin Islands and Vanuatu).

Therefore, costs related to the aforementioned transactions are deductible within the limit of the "normal value" as per Article 9 of the Italian Tax Code (Testo Unico delle Imposte sui Redditi – TUIR).

Normal value means the price generally applied to similar goods and services on the free market.

On the basis of the practice and case law occurred to date, it is fair to assume that the arm's length principle, set forth by Article 9 of the OECD Model Tax Convention and incorporated into the Italian Tax Code (i.e. Article 110(7) TUIR), should apply by analogy.

Although the price applied exceeds the normal / arm's length value, the excess is still deductible for tax purposes by evidencing:

- 1) the actual execution of the transaction: in this regard, it will be appropriate to keep available any relevant documents (i.e., invoices, transport documents, supply contracts, receipts of bank wire transfers in favour of the counterparty resident in a blacklisted State, etc.);
- 2) the actual economic interest in carrying out the transaction: in this regard, it will be appropriate to highlight all the exceptional circumstances related to the transaction under reference that justify a price higher than the normal value, which in fact makes impossible to compare said transaction with similar transactions.

The aforementioned rules do not apply to Italian companies that already fall within the scope of the Controlled Foreign Companies (CFC) rules set forth by Article 167 TUIR. This, in order for the Italian company to avoid double taxation on the same item of income (the first time, as non-deductible cost taxed in Italy on the basis of the 'black list costs' rules and, the second time, as revenue included to the non-resident company's income taxed for transparency in Italy on the basis of the CFC rules).