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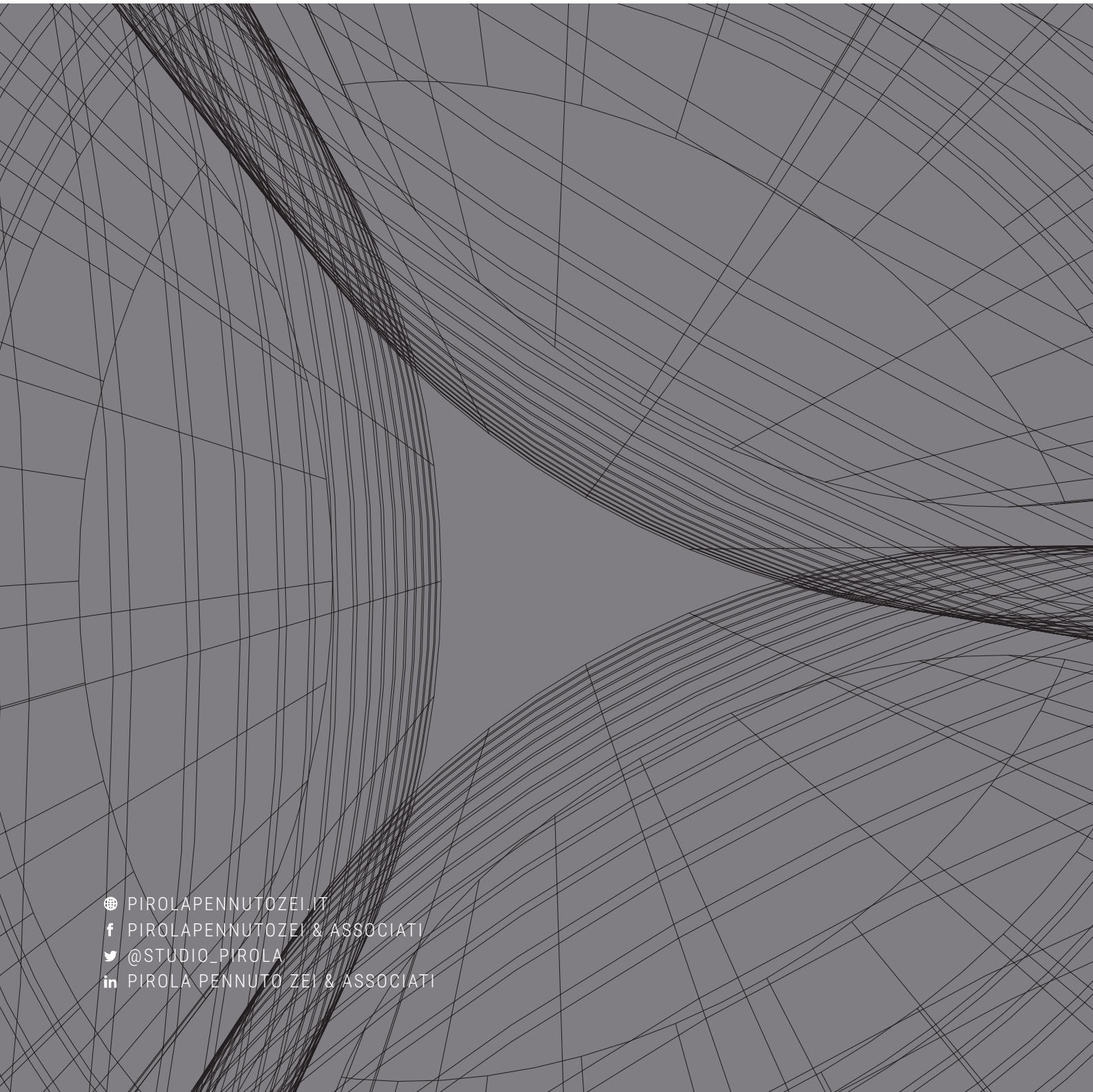

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LEGISLATION

1.1

Article 8 *bis* Law No. 172 of 4 December 2017: repatriation of workers

Article 8-bis(1) of decree law No. 148/2017 (the tax section of the 2018 Italian budget law - "*Collegato fiscale alla Manovra 2018*") converted into Law No. 172 of 4 December 2017 which entered into force on 6 December 2017, provides that: "*by way of derogation from the provisions of article 16(4) second period of legislative decree No. 147 of 14 September 2015, the option exercised pursuant to paragraph 4 shall be effective for the four-year period 2017-2020. For FY 2016, the provisions of No. 238 dated 30 December 2010 shall apply. A Revenue Agency Director Enactment, to be issued within sixty days from the entry into force of the law converting this decree, shall establish the procedure for the refund of any tax overpayments made in FY 2016*".

Article 16(4) of legislative decree No. 147/2015 provides that:

- EU nationals with a university degree who lived for at least 24 months in Italy without interruption, and - although they remained residents of their home country – carried out continuing employment, self-employment or business activities outside their home country and Italy during the past 24 months or more, who are hired/start a business or self-employment work in Italy and within three months of hiring or starting the activity transfer their permanent address and address for service to Italy, and
- EU nationals who lived for at least 24 months in Italy without interruption, and - although they remained residents of their home country - made their studies outside their home country and Italy during the past 24 months or more which resulted in their obtaining a degree/post-graduate specialization, who are hired/start a business or self-employment work in Italy and within three months of hiring or starting the activity transfer their permanent address and address for service to Italy;

provided they transferred to Italy not later than 31 December 2015, may be eligible – for the two-year period 2016-2017 – for the beneficial tax regime pursuant to law No. 238/2010, according to which income from employment and self-employment and business income is included in their IRPEF taxable base as to:

- 20% of its amount (for female workers);
- 30% of its amount (for male workers).

As an alternative, article 16(4) second period stipulates that (for the fiscal year of the transfer and the four subsequent years, i.e. from 2016 to 2020), they may opt for the beneficial tax treatment provided for by article 16 of legislative decree No. 147/2015, according to which Italian-source income from employment and self-employment earned by workers who have transferred their permanent address to Italy is included in their aggregate taxable base as to 50% of their amount.

Originally, the measure was supposed to be in place:
- with effect from 2017 (until 2016 the portion of taxable income was 70%);
- between 2017 and 2020, also in respect of employees who in 2016 had transferred their residence to Italy and to anyone who in 2016 had exercised the option for repatriated workers stipulated in article 16(4).

However, at the time of converting the decree into law, it was decided that the exercise of the option by the individuals who had repatriated by 31 December 2015 would be in place for the four-year period 2017-2020 and would not include 2016, to which the provision of law No. 238/2010 would apply (income from employment/self-employment was included in the IRPEF taxable base as to 20-30% of its amount). In the light of this change, the legislation stipulated that a Revenue Agency Director enactment would be issued setting out the procedure for the refund of any 2016 tax overpayments.

1.2

Provisions for the protection of anyone reporting offences or irregularities they have become aware of in the course of public or private employment: law on whistleblowing (No. 179 of 30 November 2017, published in the Italian Official Journal on 14 December 2017)

Law No. 179/2017, containing provisions for the protection of anyone reporting offences or wrongdoing they have become aware of in the course of public or private employment, was published in the Italian Official Journal on 14 December 2017.

No significant changes to the two separate sets of rules for the protection of civil servants (article 1) and private-sector employees (article 2) were made during the approval process. Therefore, for details on the new whistleblowing legislation please refer to our November 2017 labor newsletter.

However, the final wording of the Law differs from the text of the Enabling Bill with respect of the duty of confidentiality (for civil servants and professionals and in respect of business, scientific and industrial matters).

Article 3 of law No. 179/2017 provides that instances of whistleblowing made in accordance with the law constitute a "*fair reason*" for disclosure of information covered by the confidentiality obligation pursuant to articles 326, 622 - 623 of the Italian Penal Code and article 2105 of the Italian Civil Code.

Therefore, on the one hand the legislation describes the cases which justify a derogation from the penal code and civil code rules on confidentiality at the workplace and on the other hand it includes them among the objective reasons for exclusion from liability on the assumption that a higher interest worthy of specific protection is at stake, i.e. the integrity of the Public Authority concerned.

Finally, article 3(3) of the Law introduced an exception to the protection granted to the whistleblower: if the latter makes a disclosure for reasons beyond those strictly related to the elimination of the wrongdoing, he/she shall not benefit from the "*fair reason*" rule and therefore the whistleblower's disclosure shall constitute a violation of his/her duty of confidentiality, to be prosecuted in accordance with the applicable legislation.

GUIDANCE

2.1

INPS Circular No. 180 of 7 December 2017: clarification on seniority of service for social security contribution purposes in order to be eligible to pension benefits

In Circular No. 180 of 2017, INPS, the Italian Social Security Authority, provided once again clarification on the scope of application of article 24(15-*bis*) of decree law No. 201/2011 (converted into Law No. 214/2011), which provides for exceptional rules regarding the retirement of private-sector employees.

Such employees, on turning 64, may be eligible for:

- early retirement, provided that at 31 December 2012 they had paid social security contributions for at least 35 years;
- old-age retirement for female workers who at 31 December 2012 were 60 years of age and had paid social security contributions for 20 years.

The INPS Circular clarified that all periods of voluntary social security contribution payments, of notional social security payments for events outside private-sector employment and voluntary social security payments unrelated to a specific work activity, shall be taken into account to determine the aggregate seniority of service for social security contribution purposes.

2.2

Incentive toward employment in Southern Italy (*Bonus Sud*)

ANPAL (the National Agency for Active Work Policies) has guaranteed financial coverage of the incentive toward employment in Southern Italy (*Bonus occupazionale Sud*) in connection with additional requests by private-sector employers received by the Italian Social Security Authority not later than 31 December by a 65 million euro refinancing.

The incentive applies to companies with registered office in any of the following Regions: Basilicata,

Calabria, Campania, Apulia, Sicily, Abruzzo, Molise and Sardinia who hire (on a non-compulsory basis) youth between 15 and 24 years of age or workers from 25 years of age who do not have a paid job.

For any such new hire, employers are eligible for the exemption of the employer share of social security contributions (not including the premiums payable to the Italian Workers' Compensation Authority, INAIL) up to a maximum of € 8,060 a year per employee (such amount to the proportionally reduced for part-time employees).

At the end of 2017, the available coverage amounted to 30 million euro for Regions "*in a state of transition*" (Abruzzo, Molise and Sardinia) and 500 million Euro for "*less developed*" Regions (Basilicata, Calabria, Campania, Puglia e Sicilia), plus the additional funds made available by ANPAL (respectively 10 million Euro for Regions "*in a state of transition*" and 55 million Euro for "*less developed*" Regions).

2.3
National Labor Inspectorate Circular dated 28 November 2017: operating guidance on the installation of security or burglar alarms with integrated cameras or video cameras

Following repeated requests from companies wishing to install security or burglar alarms with an integrated camera or video camera that are automatically activated upon forced entry by intruders, the Italian National Labor Inspectorate has issued operating guidance in order to streamline the authorization procedure.

First of all, the Inspectorate specified that the installation of equipment designed to protect company assets is justified by article 4 (1) of Law No. 300/1970 and further stated that where the cameras or video cameras are activated only when the alarm system is on, there is no underlying intention to monitor the company's staff and therefore there are no reasons for denying the authorization.

2.4
Labor Ministry Ruling No. 5/2017: training of workers on redundancy or unemployment benefits hired under a vocational apprenticeship program

In its 30 November 2017 Ruling, the Labor Ministry specified that there is no need to provide basic and

cross-skill training if workers on redundancy or unemployment benefits, with no age limit, are hired under a vocational apprenticeship program.

The company who had submitted the relevant ruling request had asked whether the employer was expected to supply basic and cross-skill training to new hires over 29 years of age who, as a result of prior employment, had already received such training as part of prior vocational apprenticeship programs.

The Ministry's reply is based on the approach adopted in the Guidelines for vocational apprenticeship agreements, according to which basic and cross-skill training concerns a number of "*general*" skills which are unrelated to the specific tasks carried out and, as such, is not necessary for those workers who have already acquired such basic skills in prior employment positions.

2.5

Revenue Agency Resolution No. 151 of 13 December 2017 – Separate taxation of salary arrears

Revenue Agency Resolution No. 151 of 13 December 2017 provides clarification on the taxation of sums received by employees in 2017 in connection with work done in FYs 2013, 2014 and 2015. Article 17(1)(b) of the Italian Income Tax Code defines salary arrears as amounts accrued in years prior to that in which they are paid pursuant to laws, agreements, court decisions or in connection with promotions or new job titles. Any such salary arrears shall be subject to separate taxation pursuant to the terms of article 17(1)(b) of the Italian Income Tax Code so as to avoid that - should such amounts be paid at a time subsequent to their accrual for reasons beyond the parties' will - any changes in the gradual tax rates by brackets of income may be detrimental for the taxpayer. However, in order for separate taxation to apply, the delay in the relevant payment must be beyond the parties' direct or indirect will and cannot be in connection with the time necessary for making the relevant payment (regardless of the year in which the payment becomes due, i.e. the next year or any subsequent years).

In conclusion, in Circular No. 151 the Revenue Agency specified that with respect to performance bonuses paid in 2017 with respect to FYs 2013, 2014 e 2015:

- the payments in connection with FYs 2013 and 2014 are subject to separate taxation;
- for the payments in connection with 2015, it will be necessary to evaluate whether the conditions for

separate taxation apply. To this effect, it should be borne in mind that payment made more than one year after the amounts became due does not necessary constitute an excessively late payment.

CASE LAW

3.1

It is lawful to dismiss an employee to increase profits – Italian Supreme Court, Labor Section, decision No. 29238 dated 6 December 2017

In this decision, the Italian Supreme Court has confirmed once again the approach according to which termination of employment may be justified also by the need for the company to obtain a saving in fixed costs and an increase in profits.

In the case submitted to the Court, the employer had dismissed an employee as a result of its decision to reorganize the division he worked in, to save on company costs and obtain organizational benefits. The employee's post was eliminated and his duties and tasks were reassigned to the other members of staff.

Both the lower courts had confirmed that employment had been lawfully terminated, since both the company reorganization and the subsequent downsizing of activities and reallocation of the employee's tasks among other employees had actually taken place and were not simply specious reasons for dismissal.

The Supreme Court confirmed the lower court judges' decisions, confirming the prevailing case law according to which dismissal for objective reasons could be justified by corporate reorganizations designed to save costs and/or increase profits, since denying this possibility would be tantamount to preventing an employer from managing its enterprise freely in accordance with the principle stipulated by article 41 of the Constitution.

Under this approach, an employer is free to manage its company with a view to optimizing the efficiency and competitiveness of the organization, which may undergo changes not only when it is performing poorly but also to enhance its profits.

Thus, the Supreme Court confirmed that an employer can fairly terminate an employee for objective reasons to enhance the efficiency or profitability of its company, since in order for a dismissal to be

lawful it is sufficient that the grounds for dismissal correspond to an actual change in the company's organization.

However, if the employer is unable to prove the facts brought as grounds for dismissal for objective reasons, this will constitute a case of unfair termination on the basis that there is no adequate documentary evidence and therefore dismissal was based on specious reasons, regardless of the ultimate purpose of the corporate reorganization.

3.2

Extension of joint liability pursuant to article 29(2) of legislative decree 276/2003 to the sub-supply agreement – Constitutional Court decision No. 254 dated 6 December 2017

The Appeals Court of Venice referred a case to the Constitutional Court concerning the claim for payment of remuneration accrued during the employment relationship of the employees of a sub-supplier from the principal company, for a decision on the legal aspects of article 29 of legislative decree in the light of articles 3 and 36 of the Constitution.

According to the appeals court, article 29 of legislative decree No. 276/2003 is in contrast with the constitutional principles (articles 3 and 36 of the Constitution) as this rule could not be extensively applied beyond the cases expressly provided therein (contract and sub-contract); such restrictive interpretation would not only constitute a violation of the principles of effectiveness and adequacy of the remuneration to the detriment of the workers concerned, but would also give rise to a different treatment of cases which, although not fully corresponding, have the same economic function.

In its logical – legal reasoning, the Constitutional Court after referring to court decisions and expert guidance on the legal nature of the contract pursuant to article 1655 of the civil code (*contratto di appalto*), stated that the sub-supply agreement is a "*sub-type*" (or even an equivalent) of the contract, or in any case a general case which may include several types of agreements, including agreements that significantly differ from one another (e.g., contract for the sale of future things, staff leasing agreement …).

On this basis, it should be possible to adopt an extensive interpretation of article 29 of Legislative Decree

276/2003, resulting in the application of the joint liability provision also to the sub-supply agreement, the rationale of the article 29 being to avoid that the separation between the holder of the work contract and the user of the service could cause harm to the staff employed in the performance of an agreement and to ensure the workers' financial coverage by a person other than their direct employer.

In the opinion of the Constitutional Court, the sub-supply agreement is included among the cases of separation which constitute a type of contract with the provision of "*indirect*" work and are legally protected by article 29 of legislative decree 276/2003; for this reason "*the principal is jointly liable (also) with the sub-supplier in respect of the remuneration, social security contributions and insurance premiums for the latter's employees*".

3.3

Italian Supreme Court decision No. 29062 dated 5 December 2017: leave pursuant to article 42(5) of legislative decree 151/2001 and grounds for dismissal

By decision No. 29062 dated 5 December 2017, the Italian Supreme Court rejected the dismissal of an employee who had applied for exceptional paid leave pursuant to article 42(5) of legislative decree 151/2001 in respect of whom the employer had ascertained (by making use of investigators) that during the day he handled his private matters rather than looking after his sick relative.

Since there is no obligation to provide 24-7 care and the worker had expressly declared that he would look after the sick relative during the night (as substantiated by a medical certificate), the judges rejected the dismissal since the two conditions for granting leave were satisfied (the worker had changed address and provided night-time care).

3.4

Italian Supreme Court decision No. 55005 dated 7 December 2017: death of workers exposed to *asbestos* and relevant Board of Directors' liability

Decision No. 55005 dated 7 December 2017 clarified that the former managers of a mechanical industry charged with the manslaughter of workers who had died from exposure to *asbestos* were not to be

regarded as liable parties. This was justified by the fact that, although theoretically the company's entire Board of Directors could be regarded as the "*employer*" by law, there was no proof that the members of the executive committee had taken active part in the operating choices made by the company (i.e., the managing director), with particular regard to hygiene and safety at work issues.

3.5

Italian Supreme Court decision No. 29753 dated 12 December 2017: notice of dismissal served by email

Decision No. 29753 dated 12 December 2017 stipulates that a notice of termination due to unsuccessful completion of the probationary period sent by the employer to the employee by email satisfies the obligation to serve written notice of dismissal, which – lacking specific instructions to this effect - covers all forms of written instruments. In this specific case, it was known that the employee had received the email notice since he had written an email to his colleagues to inform them of his termination.

Pirola
Pennuto
Zei
& Associati
studio di consulenza
tributaria e legale

Via Vittor Pisani, 20
20124 Milano

T. +39.02.669951
F. +39.02.6691800

info@studiopirola.com
www.pirolapennutozei.it

LABOUR NEWSLETTER | DECEMBER 2017

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 DECEMBER 2017.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM