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***SUBJECT*: Tax issues related to the Universal Exhibition in Milan in 2015**

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1. INTRODUCTION

Expo Milano 2015 is the Universal Exhibition organized by Italy (*i.e.* Host Country) from 1 May 2015 to 31 October 2015.

Universal Exhibitions take place every 5 years, have duration of 6 months and each is dedicated to a topic of universal interest.

The one that will take place in Milan will have as its theme "Feeding the Planet, Energy for Life" and will deal with the right to healthy, safe and sufficient nutrition for the entire planet, environmental, social and economic sustainability of the food chain as well as the safeguarding of food taste and culture.

The international body that regulates the frequency, quality and oversees the conduct of Universal Exhibitions is the *Bureau International des Expositions* ("BIE").

The Agreement between the Government of the Italian Republic and the BIE (hereinafter "Agreement with the BIE" or "Agreement"), signed in Rome on 11 July 2012[1] regulates the procedures for conducting and participating in Expo Milano 2015.

This Agreement includes the detailed discipline in the General Regulations of the event[2] and Special Regulations for the implementation of the said General Regulations.

This standard document provides clarifications as to taxation provisions in this Agreement with reference to the various parties, which are involved in the event in question in various ways.

The standard document complements other initiatives undertaken by the Revenue Agency to facilitate foreign parties whose participation in Expo Milano 2015 involves compliance with the Italian tax system. In particular:

- with Order of the Director of the Revenue Agency dated 28 November 2013, a

[1] Ratified by Law 14 January 2013, no. 3, in force since 19 April 2013

[2] The General Regulations are provided for in article 8 of the Convention relating to international exhibitions signed in Paris 22 November 1928.

specially dedicated *Desk* was set up for the event (Expo2015@agenziaentrate.it) which may be contacted by the interested parties directly, through professionals or through Expo 2015 S.p.A., for answers to queries of fiscal nature;

- a section of the Revenue Agency website is dedicated to tax-related issues regarding Expo Milano 2015 (www.agenziaentrate.gov.it/wps/content/nsilib/nsi/documentazione/desk+dedicato+e+desk+expo+2015);
- a contact point will be set up at the "Services Centre for Participants" Expo

Milano 2015 (hereinafter, "Contact Point"), which will involve the presence of Agency officials, which participants may contact for tax requirements.

2. EXPO MILANO 2015: PARTIES INVOLVED

Expo Milano 2015 shall involve various parties whose competences are regulated by article 1 of the Agreement with the BIE.

Among these parties, an important role concerns **Official and Unofficial Participants.**

Official Participants are States and International Intergovernmental Organizations that have received and accepted an official invitation from the Italian government to participate in Expo Milano 2015. Each Official Participant has its own operational structure, referred to as ***Section General Commissariat***, with its own staff. In particular, ***Section Staff*** includes:

- the Section General Commissioner, which generally represents the Commissariat;
- the Deputy General Commissioner;
- the Pavilion Director and
- other direct employees of the Section General Commissariat.

Unofficial Participants are legal, national or foreign entities, authorized by the General Commissioner of Expo Milano 2015 to participate in the event, outside of the Sections of Official Participants. Unofficial Participants may not be, for example, government authorities, businesses and civil society organizations. Each Unofficial Participant is represented by a *Director.*

Regarding the **Host Country** *(i.e.* Italy), article 1 of the Agreement regulates the figures of the:

- General Commissioner of Expo Milano 2015;
- Organizer and
- Owner.

The **General Commissioner of Expo Milano 2015** represents the Italian state before the BIE for the fulfilment of international obligations adopted by Italy for the conduct of the event.

The **Organizer** is the company "Expo 2015 S.p.A.", which is responsible for implementing the necessary organizational and infrastructural projects for the construction of Expo Milano 2015, such as, for example, works for construction and preparation of the site, as well as all activities related to the preparation, organization and management of the Event. Article 1, paragraph 2 of the Decree of the President of the Council of Ministers dated 9 October 2012 also entrusts to Expo 2015 S.p.A. the task of implementing and managing the Italian Pavilion.

The **Owner** is the company "AREXPO S.p.A.", owner of the areas of the exhibition site of Expo Milano 2015 on which there is a surface right in favour of the Organiser.

3. OFFICIAL AND UNOFFICIAL PARTICIPANTS: TAX BENEFITS

In order to encourage development and participation in Expo Milano 2015, the Agreement with the BIE acknowledges Official and Unofficial Participants, as well as the Organizer and Owner, special tax benefits for both direct and indirect tax purposes. These are special benefits, normally provided for in the Agreements signed by the BIE, which include those provided by ordinary Italian tax regime for the majority of taxpayers.

The tax benefits that the Agreement acknowledges Official and Unofficial Participants are outlined below.

3.1 Importance of income - Exemption from IRES (Corporate Income Tax), IRPEF (Personal Income Tax), IRAP (Regional Income Tax), and related additional tax

3.1.1 Official Participants

The operating structures of Official Participants, represented by the Section General Commissariat, benefit from the tax relief provided by the Agreement with the BIE when carrying out their institutional exhibition activities.

Article 10, paragraph 1, of the Agreement with the BIE provides that *"Section General Commissariats, their property, assets and income are exempt, as part of institutional exhibition and non-commercial activities, from all direct taxation and, within the limits laid down in this article, from indirect taxes, by the State, Regions, Provinces and Municipalities."*

These benefits do not include any business carried out in Italy by a Section General Commissioner, with reference to which the latter shall, however, comply with the requirements and obligations ordinarily provided by the Italian tax regulations for the purposes of direct taxes, VAT and other indirect taxes.

With respect to income taxes, in accordance with the aforementioned article, the **Section General Commissariats**, for their property, assets and income, achieved in relation to their non-commercial "institutional activities" of participation in Expo Milano 2015, are exempted from all direct taxation in Italy by the State, Regions, Provinces and Municipalities.

It is a provision with a clear benefit purpose from which it is possible to deduce that in order to facilitate participation in the event, Official Participants are exempt - by international agreement - from ordinary accounting and declarative requirements in the host country with regard to income from the performance of their institutional activities.

In respect of the same purposes it is believed that a similar exemption shall be recognized for

IRAP purposes with reference to the net production value relative to non-commercial "institutional activities" carried out by Section General Commissariats.

Therefore, such parties are obliged to submit a tax return in Italy only if they earn income other than that relating to their "institutional activities." If such income is taxable in Italy in accordance with the provisions of article 23 of the Consolidated Income Tax Act (TUIR) and International Conventions against double taxation, where applicable, it shall be declared in the *Modello Unico* tax form for Non-commercial organizations and determined according to the general rules laid down by Italian tax regulations for this category of taxpayers.

A similar exemption is granted to the **Section Staff**[3] provided they do not have Italian citizenship or residence in Italy.

In accordance with article 12 of the Agreement with BIE, in fact, *"Section staff that do not have Italian citizenship or residence in Italy shall benefit from the following privileges for the period of stay in Italy:*

a) *exemption from any form of direct taxation on salaries, emoluments, allowances paid by the Section General Commissariat or on its behalf;*

b) *exemption from any form of direct taxation on income generated outside the Italian Republic;...* [omissis]".

Of course, if such parties have other taxable income in Italy as considered produced therein (for example, rental income from property held in Italy, income from pensions paid by the Italian State, dividends and interest on securities paid by the State or Italian parties, compensation from the use of intellectual property, industrial patents and trademarks, work compensation not paid by Section General Commissariats), said income involves the taxation of the latter for the purposes of direct

[3] Section Staff includes the Section General Commissioner, Deputy General Commissioner , the Pavilion Director and other direct employees of the Section General Commissariat.

taxes, according to the general rules laid down by the Italian tax legislation and Conventions to avoid any applicable double taxation.

The benefit provided for in article 12 of the Agreement shall be entitled to members of the Section Staff resident in Italy for tax purposes. Therefore, pursuant to article 3, paragraph 1, of the Consolidated Income Tax Act (TUIR), all their income, wherever earned, including income relating to Expo Milano 2015 shall be declared and subjected to taxation in Italy according to the rules ordinarily applicable to residents.

To this end, it shall be noted that - in accordance with article 2 of the TUIR - an individual is considered to be tax resident in Italy for the purposes of income tax when registered at the resident population registry office or domiciled or resident in the State within the meaning of the Civil Code for most of the tax period (more than 183 days).

Said criteria is alternative in the sense that it is sufficient that only one be verified to ensure that an individual may be regarded as tax resident in Italy.

Unless as proven otherwise by the taxpayer, residents also include Italian citizens removed from the resident population registers and transferred to states or territories with preferential tax regime, identified by the Decree of the Minister of Finance, 4 May 1999, as amended (the so-called *"black list").*

If an individual is considered *dual residence,* that is resident for tax purposes in Italy, or in another country, the conflict of residence shall be resolved on the basis of the *tie breaker rules* provided for in article 4 of the Convention against double taxation between Italy and the other State, if in force.

The requirement of residence for tax purposes in Italy is acquired from the beginning of the tax period in which the individual establishes the connection with the territory of the Italian State.

In this regard, it shall be stated that the stay in Italy of Section Staff solely to participate in Expo Milano 2015, even if it lasts for more than 183 days, does not require tax residence in Italy.

In fact, from the *logic of* article 12 of the Agreement, it is possible to infer that, to take advantage of the benefits therein, the Section Staff shall not be considered tax resident in Italy for reasons beyond participation in the Expo.

If it were admissible to have tax residence by virtue of participation in the event, the stay of Section Staff in our country for this purpose, would have *retroactive effect* on the benefit herewith which consequently would no longer be required. In other words, the stay of Section Staff in Italy justified by the event organization and management would penalize such parties, discouraging their participation in Expo Milano 2015.

In order to encourage participation in the event by members of the Section Staff, it is believed that a similar benefit can be acknowledged - for the purpose of tax residence in Italy - to their spouses and family members (ex. children). Therefore, the latter shall not have tax residence in Italy, if they to remain in our country for the simple fact of "accompanying" Section Staff.

Of course, is such parties earn income in Italy in accordance with article 23 of the TUIR, such income shall be subjected therein to direct taxes in accordance with the general rules laid down by the national tax legislation and Conventions for the avoidance of double taxation when in force.

3.1.2 Unofficial Participants

In accordance with Article 16 of the Agreement with the BIE, *"Unofficial Participants are exempt, as part of non-commercial activities carried out at their exhibition space, from all direct taxation* [ed. note IRES, IRPEF, IRAP and related additional tax]".

To this end, it shall be noted that Unofficial Participants are - in general - international organizations, foreign or national entities and associations, as well as foreign or national companies.

Therefore, for the aforementioned provision, if said parties perform non-commercial activity only at their exhibition space, the income from the performance of said activity is exempt from all

direct taxation. The rule is consistent with the purposes of the Universal Exhibitions that are precisely events of non-commercial nature since they are designed as opportunities for interaction and exchange between countries.

It follows that the performance by Unofficial Participants of a non-commercial activity at their exhibition space is beyond the scope of the Expo and therefore cannot be facilitated. This implies that if such parties perform commercial activity at their exhibition space, income relating thereto shall not benefit from any facility and shall be taxed in Italy in accordance with the provisions of articles 23, 151 and 152 of the TUIR.

The subsequent article 18 extends the benefits provided for Section Staff to the **Staff of the Unofficial Participants, belonging to foreign public administration** provided they do not have Italian citizenship or residence in Italy. More precisely, if the staff of Unofficial Participants includes people that belong to foreign public administration, and are not resident in Italy, for the period of stay in Italy for the organization and management of Expo Milano 2015, such persons shall be exempt from any form of direct taxation:

- on salaries, emoluments, allowances paid by the public of belonging or on its behalf;
- on income generated outside the Italian Republic.

Conversely, the Staff of Unofficial Participants that does not belong to foreign territorial public administration does not benefit from any exemption for the purposes of income tax on earnings listed above and therefore the latter are taxable in Italy under domestic tax provisions and conventions against double taxation, where in force. Of course, the possession by the Staff of Unofficial Participants belonging or not to foreign public administration, of other taxable income in Italy, as considered herein pursuant to article 23 of the TUIR, involves the taxation of the latter for the purposes of direct taxes, according to the general rules laid down by the Italian national regulations and conventions for the avoidance of double taxation when in force (for possible examples of income

generated in Italy, refer to previous paragraph).

It is understood that, in line with as already clarified for Official Participants, the period of stay in Italy of the Staff of Unofficial Participants for the organization and management of Expo Milano 2015, shall not entitle its members, their spouses and family members fiscal residency in Italy.

3.2 Value Added Tax (VAT)

3.2.1 Official Participants

The Section General Commissariats may purchase and/or import goods and services in a non-taxable VAT regime for a significant amount provided that such goods and/or services be used in the official exhibition activity.

Instead, there are no facilities for purchases made for the commercial activity possibly carried out by the Section General Commissariat as part of Expo Milano 2015, which will be subject to VAT in accordance with the provisions ordinarily provided. Therefore, if the goods are imported, their introduction into the territory of the State would be outright with the subsequent payment of the relevant duties *(i.e.* duties and VAT).

Article 10, paragraph 5 of the Agreement provides in this regard that *"with regard to value added tax (VAT), purchases of goods and services and imports of goods for a significant amount relating to their official activities by the Section General Commissariats are not taxable. For the purposes of this Agreement the term "purchase and/or imports for a significant amount" will apply to the purchase of goods and services and/or import of goods for an amount exceeding the limit laid down by national law for international organizations in Italy."*

Therefore, the Section General Commissariats, can buy or import, for example, the goods required for the realization of their exhibition Pavilion in a non-taxable VAT regime.

The resolution of 15 January 2014, no. 10/E clarifies that *"goods and services of a significant amount"* to which the facility in question applies are those for amounts exceeding Euro 300,00 (three

hundred), which is the limit referred to in article 72, paragraph 2 of Presidential Decree 26 October 1972, no. 633.

The VAT system in question is reserved for the Section General Commissariats.

It shall be recalled that Section General Commissariat refers to the structure by which an Official Participant develops and manages its participation in Expo Milano 2015.

Concerning the identification of said structure, the Agreement with the BIE does not provide for compliance or special clauses, thus leaving Official Participants free to organize and manage the event in the way they deem most consistent with their national legislation, which of course changes from state to state.

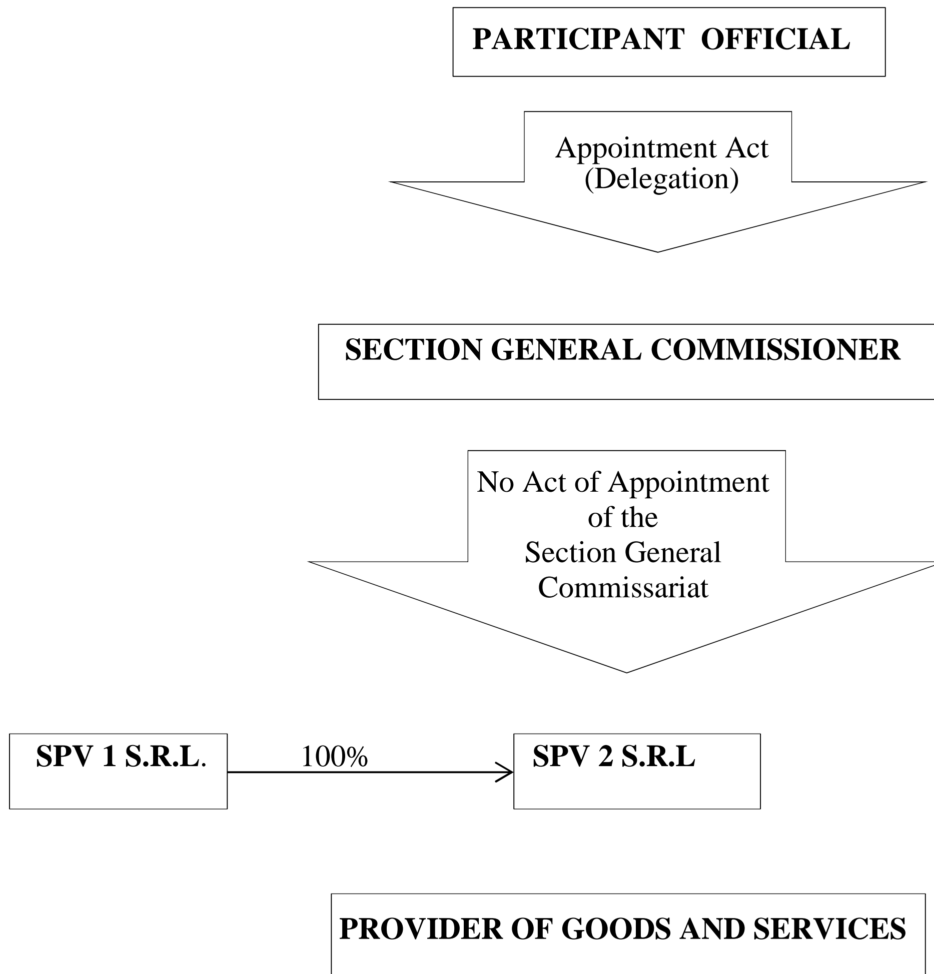
In this context, it is believed that the function of *"the Section General Commissariat"* can be entrusted to:

1. a Public Administration of the Official Participant (for example, a section of the Ministry of Agriculture of a foreign state specially detached in Milan), or
2. a third party, such as a company set up *ad hoc* (*i.e. Special Purpose Vehicle - SPV*) or a *General Contractor.*

If the role of the Section General Commissariat is performed by a third party (hypothesis ***sub*** **2**), it is believed that said qualification shall be in a written document, which may also be the establishment act of the special purpose company established, which shall also state that the Section General Commissioner is responsible for the work of the latter.

In fact, from the Agreement with the BIE it is possible to infer that the Section General Commissioner, as representative of the structure and the foreign State, is fully responsible for the actions of their Commissariat. Therefore, a different *modus operandi*, for example, to limit or to forfeit the responsibility of the Section General Commissariat through the interposition, between the latter and the provider, to one or more entities with limited liability, would be contrary to the ratio of said Agreement.

The above can be better explained by the following example.



In this example, neither the Official Participant *(i.e.* Foreign state), nor the Section General Commissioner have conferred the status of the Section General Commissariat to SPV 2, limited liability company, wholly owned by SPV 1.

Therefore, SPV 2 does not act against any provider as the Section General Commissariat and therefore cannot benefit from the regime of VAT tax exemption referred to in article 10, paragraph 5,

of the Agreement with the BIE.

In the situation described *(i.e.* lack of an act of appointment of the Section General Commissariat of the Official Participant), the provider of the good or service can issue an invoice under the VAT tax exemption referred to in article 10 above provided that SPV 2 acts for and on behalf of the Section General Commissariat, i.e. on the basis of a mandate with representation.

For example, this hypothesis may occur when the Official Participant and/or the Section General Commissioner decide to take part in the event without a special structure, but acting on the basis of mandates with representation granted to special SPV or third parties *(i.e. General Contractor).*

In fact, although the agreement with the BIE reserves the VAT system herewith to the Section General Commissariats, it is believed that the lack of such a structure does not prevent the acknowledgement of VAT exemption to the Section General Commissioner which, as already mentioned, is the person delegated by the foreign State to manage participation in Expo Milano 2015. In this case, the provider shall issue an invoice directly to the Section General Commissioner.

The "scheme of the mandate with representation" may also be used if the function of the Section General Commissariat is carried out by a Public Administration of the Official Participant or by an Administration or Entity (hypothesis *sub 1* page 14).

In this case, in order to benefit from the VAT exemption regime herewith it is not necessary for said structure to interface directly with the provider: it can benefit from the facilitation also when operating through a legal representative, or a person acting in for and on behalf of the same Commissariat, on the basis of a mandate with representation. In this case, the proxy shall interface directly with the provider, in respect of which, however, shall be a "transparent" subject. In other words, for VAT purposes, it is as if the proxy did not exist for the provider, who shall issue an invoice directly to the Commissariat.

For actual benefit of the facilitation, the Commissariat or representative thereof shall submit a declaration to the provider.

This can be drafted using the form annexed to Resolution 15 January 2014, no. 10/E, available in several languages on the website of the Revenue Agency, in the section EXPO 2015[4]. Alternatively, the form may be requested at the contact point at the Agency ("Service Center for Participants"). The scheme shall be drawn up in duplicate copy: one is kept by the General Commissariat and the other is submitted to the provider.

The ability to make purchases of goods and/or services under VAT exemption regime is reserved to the Section General Commissariats and does not extend to purchases made by the Section Staff for personal use, for which there are no benefits for VAT purposes and other indirect taxes.

In view of the multiplicity of the participating countries and therefore, the diversity of their legal systems, possible organizational models of participation other than those described above (hypothesis ***sub 1*** and ***sub 2*** p. 13) can be evaluated during application for acknowledgement of the VAT exemption regime provided for by the Agreement with the BIE.

Pursuant to paragraph 8 of article 10 of Agreement with the BIE, the benefit in question shall not apply if the goods imported free of taxes, duties, prohibitions and restrictions, in accordance with the provisions of the said Agreement, shall be transferred to third parties for payment or free of charge without the prior consent of the Italian authorities and without payment of related taxes, fees and contributions. If such taxes, fees and contributions are set according to the value of the goods in question, the value of reference for their determination is that of the same assets at the time of sale, with the application of the tariff in force at that date.

The assets to which the regulation refers are, for example, materials used for the construction of exhibition pavilions and stands, as well as products to be exhibited during Expo Milano 2015.

These goods are normally imported under temporary admission regime and therefore, once the event ends, shall be re-exported under tax exemption regime. If this does not occur without the prior consent of the Italian authorities, VAT and customs duties and fees shall necessarily be acquitted in

[4] www.agenziaentrate.gov.it/wps/content/nsilib/nsi/documentazione/desk+dedicato+e+desk+expo+2015

accordance with ordinary provisions[5].

Lastly, it shall be noted that transactions in respect of the Section General Commissariats under the VAT exemption regime pursuant to article 10, paragraph 5 of the Agreement do not form part of the *limit* to purchase and import goods and services without paying taxes.

In fact, it shall be considered that said transactions cannot be considered as tax exemption transactions not that under domestic legislation benefit from the *limit,* such as, for example, those referred to in articles 8, *8-bis,* 9 and 72 of Presidential Decree no. 633 of 1972.

The transactions carried out on behalf of the Section General Commissariat by providers involve goods and services intended for an activity performed within the state and therefore cannot be exports of goods and services in the absence of an express provision of law in this sense.

Moreover, it shall be taken into account that the VAT exemption regime reserved to the Section General Commissariats is provided for by the Agreement with the BIE, which as a source of international law is *lex specialis,* able to derogate from the internal rules relating to VAT.

For this reason, the VAT regime under consideration is to be considered an *ad hoc* benefit limited to the event, and thus to a case entirely different from others.

3.2.2 Unofficial Participants

Unofficial Participants are not entitled to the VAT benefits acknowledged to Official Participants by article 10, paragraph 5, of the Agreement.

Therefore, Unofficial Participants cannot purchase goods and/or services under the VAT exemption regime as well as import goods exceeding Euro 300.00 under the same regime. Therefore, said purchases are subject to VAT in accordance with the provisions ordinarily provided for the generality of operators even if related to the official exhibition activity of Unofficial Participants for participation in Expo Milano 2015.

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[5] For more details refer to the Guidelines of the Customs Agency of Expo Milano 2015.

3.3 Benefits for the purposes of registration tax and other indirect taxes

3.3.1 Official Participants

For information completeness, it shall be noted that as clarified by the Department of Finance, by prot. note 21571 of 17 July 2014, with regard to **Municipal Property Tax (IMU)**, *"within the meaning of article 10, paragraph 2, of the Agreement with the BIE, the buildings owned by the Section General Commissariats and by Unofficial Participants are exempt from said tax.*

Thus, regarding the existence of a declarative obligation by the aforementioned parties, it shall be noted that the instructions to the IMU statement, approved by Ministerial Decree 30 October 2012, paragraph 1.3 which outlines the cases for which the IMU statement shall be submitted, state the principle for which said required declarations shall be exercised only if "there have been changes that are not, however, known by the municipality." This principle has made it possible to assess which of the exemptions provided by art. 7, paragraph 1, of Legislative Decree no. 504 of 1992 are the subject of the declarative obligation.

Therefore, in using the same criteria, it is believed that even for the case in question, Official and Unofficial Participants are not required to fulfil any declarative obligation.

*As for the **Tax on Indivisible Services (TASI)**, it is believed that the exemptions provided for the purpose of IMU can also be extended to the TASI, on the assumption that the provisions relating to IMU are intended to exclude from local requirements buildings held by parties indicated in said articles 10 and 16 of Law no. 3 of 2013, with the intent, as in art. 2 of Law no. 3 of 2013, to "implement the necessary measures to facilitate participation in Expo Milano 2015 and thus promote the success of the Exhibition." In fact, it shall be emphasized, that the Agreement in question was ratified by the Law of 14 January 2013, no. 3, when the TASI had not yet been established and, therefore, the provisions contained therein could not, of course, take into account said tax.*

As a further basis for the application of the exemption provided for IMU to TASI , there is also the fact that the TASI has been included in paragraph 639 of art. 1 of the stability law for the year

2014 in the IUC, the single municipality tax, which also consists of IMU and the tax on waste (TARI).

Aside from this tax, intended to cover the costs relating to waste management services, importance shall be given to the close correlation between IMU and TASI, resulting:

- *from the tax assumption that, in accordance with paragraph 669 of article 1 of the stability law for the year 2014, is constituted by the possession or custody, at any title, of buildings and building areas as defined for IMU purposes;*
- *from the identity of the tax base of TASI, which, as established by paragraph 675, is as provided for IMU;*
- *from the provision of paragraph 677, which requires that the municipality, in determining the TASI rate, shall respect the limit according to which the sum of the TASI and IMU rates cannot be higher than the maximum rate permitted by state law for IMU in relation to the various types of property, in force at 31 December 2013.*

It shall be noted that exemption from TASI also does not imply any declarative obligation by the parties in question, as under paragraph 687 of article 1 of the stability law for the year 2014 for the purposes of the TASI statement, the provisions concerning submission of the IMU statement apply".

In addition, pursuant to paragraph 3 of article 10 of the Agreement with the BIE, acts, transactions and financial transactions relating to purchases of goods and services by the Section General Commissariat for the pursuit of its institutional exhibition and non-commercial purposes are exempt from **registration tax, stamp duty, mortgage and land tax**. However, said exemption is limited to the payment of taxes and does not extend the registration requirement, provided for by law.

For example, the following are subject to registration: the sale and purchase of property, the establishment or transfer of a surface or use right, including pure and simple renunciation of the same, leases and rentals of properties.

Registration shall be requested by the Section General Commissariat or representative thereof:

- generally within 20 days from the date of the act, if completed in Italy,
- within 30 days from the date of the act, for the latter, it is in the form of a public deed and certified private deed registered by electronic means, as well as for property lease and rental contracts;
- within 60 days from the date of the act, if the latter relates to property or businesses existing within the State and is completed abroad.

3.3.2 Unofficial Participants

Pursuant to article 16, paragraph 2, of the Agreement with the BIE, buildings held by Unofficial Participants are also exempt from payment of **Municipal Property Tax (IMU)**. Both for the purposes of said tax, and for TASI the same clarifications in the previous paragraph apply.

Moreover, it shall be noted that in accordance with the subsequent paragraph 3 of the same article, exemption from **registration taxes, stamp duty, mortgage and land taxes** is entitled to Unofficial Participants only for acts, transactions and financial transactions relating to buildings used by them for participation in Expo Milano 2015. It follows that, unlike Official Participants, all the acts, transactions and financial transactions carried out by Unofficial Participants which do not relate to the aforesaid buildings require the taxes in question in accordance with the provisions ordinarily provided.

4. COMMERCIAL ACTIVITIES PERFORMED BY PARTICIPANTS

Article 19 of the General Regulations of Expo Milano 2015 states that the exhibition is of non-commercial nature.

In fact, said provision provides that only twenty percent (20%) of the exhibition space can be used for the performance of a commercial activity, such as, for example, the sale of products, gadgets,

as well as catering or the organization of shows for a fee.

As explained in paragraph 3 above, the conduct of such activities by an Official or Unofficial Participant does not benefit from any tax facility for the purposes of direct taxes, IRAP, VAT and other indirect taxes as provided for in the Agreement with the BIE.

It follows that if Official and Unofficial Participants were to perform in Italy at the same time a commercial activity and their non-commercial exhibition institutional activities, they would benefit from the facilitations provided for by articles 10 and 16 of the Agreement only with reference to the latter activity.

The conduct of a commercial activity by a Participant implies for the latter the need to fulfil the tax obligations for the purposes of income tax and VAT.

For the purposes of income tax, it shall be noted that taxation in Italy of income arising from the performance of a commercial activity by a non-resident party is subject to the presence of a permanent establishment in Italy.

In fact, under article 23, paragraph 1, letter *e)* of the TUIR, a non-resident may be taxed in Italy for corporate income tax provided that the income is generated through a permanent establishment located in the territory of the State.

4.1 Presence of a permanent establishment in Italy

For the purposes of income tax, article 162, paragraph 1 of the TUIR provides a definition of permanent establishment substantially in line with that of article 5 of the OECD Convention Model against double taxation on income (hereinafter, "OECD Model").

A permanent establishment (in short, even “*SO*” or “branch”) refers to a fixed place of business through which a company resident in a State shall exercise, in whole or in part, its activity in another country.

From the definition above, it is clear that the configurability of a permanent establishment

requires the simultaneous existence of three requirements (refer to paragraph 2 of the Commentary on article 5 of the OECD Model):

1. the existence of a *place of business,* that is premises or places for which the foreign company has availability, for whatever reason;
2. the spatial or temporal "fixity" of the place of business, which shall therefore be established *("at a distinct place with a certain degree of permanence");*
3. the conduct of business through such a fixed base, or at least in the state where the base is located.

This appropriately stated, it is believed that if at the exhibition space of an Official or Unofficial Participant a commercial activity were carried out, in principle, a permanent establishment shall be considered as existing.

The existence of the first and third of the requirements listed above is *in re ipsa,* since - as already explained - article 19 of the General Regulation allows a Participant to carry out commercial activity in its own exhibition space within the limits of 20 per cent of such space.

With regard to the requirement of temporal fixity of the place of business, it shall be noted that neither article 5 of the OECD Model, nor article 162 of the TUIR provide for a time limit of stay below which the existence of a permanent establishment can be excluded[6].

The Commentary to the OECD Model states that for the place of business to be considered a permanent establishment it shall have a certain degree of permanence in the sense that it shall not be temporary. However, at the same time, it allows the possibility that a permanent establishment may be constituted if the fixed place is used for a short period of time as the activity carried out - by means of such fixed base - shall be in a short period of time (refer to paragraph 6 of the OECD Commentary on article 5 of the related Model).

The same commentary also states that for the period of six (6) months, adopted by several

[6] Only for the site there is a minimum duration. However, this case can be excluded for the purpose in question.

states as minimum permanence to constitute the existence of a permanent establishment cannot be considered in an absolute sense as the standard followed by the States is not homogeneous. Therefore, the term of 6 months shall rather be regarded as a rough indication, suitable to be adapted if circumstances require so. For example, this is the case of business activities that may be exercised only in the State in question: in this case, the activity may be short-term because of its intrinsic characteristics. However, as fully exercised in this state, connection with the territory of the latter is stronger.

Given the absence in the OECD Model, in national regulations as well as in agreements entered into by Italy for a minimum period of permanence, the *case by case* analysis recommended by the Commentary suggests that in the present case the time requirement shall be adapted to the limited duration event which in any case is likely to last for 6 months (1 May - 31 October 2015).

Therefore, the necessary time requirement is believed to be verified so that the existence of a permanent establishment in Italy can be constituted when a Participant carries a commercial activity in Italy.

It is understood that in relation to income and the net production value realized by such permanent establishment, the Participant is obliged to observe the ordinary accounting, declarative and payment requirements provided for IRES and IRAP purposes.

Similarly for direct taxes, including VAT purposes, the exercise in Italy, by a non-resident party, of a commercial activity may determine the existence of a “branch”, relevant to the territoriality of some service provisions.

The "permanent establishment" for VAT purposes is defined in article 11 of EU Regulation 15 March 2011, no. 282 (provision that shall be deemed to refer to both the provision of services and the sale of goods) laying down provisions for the application of Directive 2006/112/EC. Branch shall include any organization, other than the main place of economic activity, characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable

them:

- to receive and use the services provided for their needs;
- and/or to provide the services for which provision is ensured.

From this provision there is a difference between the definition of permanent establishment for the purposes of direct taxation and for VAT purposes. In fact, in the first case, the personnel requirement is not necessary, if not indispensable to the type of activity carried out at the place of business. However, in terms of VAT, the branch requires the use of human and material resources, as the mere presence of plant and equipment on the territory of a State is not sufficient.

In other words, the human and the technical/material factor are considered essential elements to constitute the existence of a permanent establishment in the State for the purposes of value added tax. Moreover, pursuant to the aforementioned article 11, the allocation of a VAT number alone is not sufficient evidence of the existence in Italy of the branch of a non-resident entity that has its main place of economic activity in another State.

Pursuant to article 7, paragraph 1, lett. *D)* of Presidential Decree 26 October 1972, no. 633, the presence of a branch, in the terms set out above, allows the non-resident party to acquire the *status* of VAT taxable party established in Italy only for transactions rendered or received by the permanent establishment.

This leads to significant consequences to the effects of territoriality of the provision of services and, therefore, for the purpose of identifying the party responsible for the payment of the tax and fulfilment of the related instrumental obligations.

In particular, in terms of the territorial relevance of the provision of services, it shall be noted that according to the general principles set out in article 7-ter, paragraph 1, of Presidential Decree no. 633 of 1972, said transactions are considered rendered in Italy when they:

- are rendered to taxable parties established in the territory of the State and therefore also to an

Italian branch;

- are rendered to non-taxable clients by taxable parties established in the territory of the State or by an Italian branch.

In order to identify the place where the service provisions are to be taxed, it is necessary to establish, therefore, whether the transactions are rendered or received by a permanent establishment in Italy.

For example, in the case in which the provision is rendered by an Italian provider with a permanent establishment in Italy, the transaction is taxable in Italy. If, however, the provider renders the same provision directly to the non-resident party, the transaction is taxable in the State of establishment of the non-resident person.

In order to identify the client of the service, the circular dated 29 July 2011, no. 37/E clarifies that reference shall be made to the criteria laid down in article 22 of the aforementioned Regulations, such as the nature and use of the services provided, the VAT number of the client notified to the provider and the VAT number of the party paying the service.

Moreover, it shall be noted that according to article 17, paragraph 4, of Presidential Decree no. 633 of 1972, in the presence of a permanent establishment in Italy both the appointment of the tax representative and direct identification are excluded.

Lastly, it shall be noted that verification of the configurability of the permanent establishment, whether for the purposes of direct taxes or for VAT purposes, shall be conducted on a case by case basis, having regard to the specific characteristics of the structure by which the non-resident entity operates in territories of the State and the concrete ways in which it exercises business in Italy.

Moreover, by Decree-Law 23 December 2013, no. 145, ratified by Law 21 February 2014, no. 9, the possibility has been provided for foreign entities to know, in advance, the opinion of the financial administration regarding the existence in Italy of permanent establishment for the purposes of

direct taxes. It is, in particular, an instance of an international *ruling* to be submitted on plain paper (in parcel not in envelope and by return registered letter), to the International *Ruling* Office - Central Assessment Office - International Sector, to the following addresses:

- Rome, Via Cristoforo Colombo, 426 c/d, Post Code 00145;
- Milan, Via Manin, 25, Post Code 20121.

4.2 Absence of a permanent establishment in Italy: VAT requirements

If an Official or Unofficial Participant conducts a commercial activity without the elements to constitute a permanent establishment in the territory of the State, it is required to be identified in Italy for VAT purposes, in accordance with article 17, paragraph 3 of Presidential Decree no. 633 of 1972, while maintaining the *status* of non-resident operator. This is obviously subject to the fact that it conducts transactions for which it is liable to pay tax in Italy.

A similar requirement is expected for all non-resident parties with no branch in Italy that are in the same conditions.

The procedures for identifying VAT differ depending on whether the operator is an EU or non-EU entity.

If the Participant (Official or Unofficial) is resident in another EU Member State it may be directly identified as provided for in article 35-ter of Presidential Decree no. 633 of 1972 or alternatively appoint a tax representative in the manner referred to in article 17, paragraph 3 of said Presidential Decree.

However, if the Participant were resident in a non-EU State, in principle, it may be identified for VAT purposes in Italy only by the appointment of a tax representative, which shall be required to carry out all the requirements relevant for VAT purposes, including the payment of tax.

5. ORGANIZER

5.1 Importance of income and net production value

The Organiser, namely EXPO 2015 S.p.A., is the entity provided for by the Agreement with the BIE to perform all functions necessary for the realization of the exhibition event. Expo 2015 S.p.A. is also responsible for the realization and management of the Italian Pavilion.

The income earned by the Organiser is considered business income subject to ordinary determination methods provided for entities that carry out commercial activities.

However, for the determination of IRES and IRAP due, the Organizer shall distinguish the activities carried out for the realization and management of the Italian Pavilion (so-called exempt activity), from other commercial activities, since only the income and the net production value resulting from the realization and management of the Italian Pavilion benefits from the exemptions reserved for Official Participants pursuant to article 10 of the Agreement, as provided in article 5, paragraph *1-quater* of Decree-Law 26 April 2013, no. 43, converted into Law 24 June 2013, no. 71.

In view of the different tax application for said income with respect to that from other activities conducted by Expo 2015 S.p.A., it is believed that the latter shall clearly identify the positive and negative components of income pertaining to the exempt activity.

In this regard, it shall be noted that application of the exemption of income relating to the realization and/or management of the Italian Pavilion does not exempt, in any event, the Organizer from the requirement of determining, according to the ordinary rules of IRES, the tax result arising from such activities which, although exempt for the same, shall be indicated in the tax return, *Modello Unico SC*, line RF50. This requirement is also necessary for the proper management of the tax losses of the so-called exempt activity that, under article 83, paragraph 1 of the TUIR, *"become important in the same way that positive results would become important",* without prejudice to the procedures of use of the same under article 84 of the TUIR.

The determination of the result for the exempt activity shall therefore include the typical costs

and revenues of said activity (ex. construction costs, maintenance costs, personnel costs involved in the management of the Italian Pavilion), as well as other administrative and financial costs directly related to the same activity. Financial expenses (ex. interest expenses, commissions and bank fees) can be considered direct if they are related to loans specifically for the realization and management of the Italian Pavilion.

The same principle applies to the allocation to the taxable management of costs and revenues.

General administrative, commercial and financial costs will be allocated to the exempt and taxable activity according to functional criteria of apportionment, based on objective parameters and not on mere management needs.

Solely by way of example, reference may be made to the ratio between the amount of revenue and other income from exempt operations (or taxable) and the total amount of all income and revenue for the Organiser.

Based on this criterion, for example, it may be correct that if Expo 2015 S.p.A. were to gain income and revenues from the taxable activity in an amount equal to ninety-eight per cent of total revenues and income, it would contribute common expenses to the formation of the taxable income in the same percentage, allocating the remaining two percent to the exempt activity.

The possibility shall remain of using other methods of apportionment of common costs, bearing in mind that distribution of the same cannot be in an arbitrary manner and that the criterion used shall remain constant and be adequately documented.

A specific favourable tax application is also provided for government grants to the Organizer to finance the realization of Expo Milano 2015.

In particular, under article 19, paragraph 4, of the Agreement, *"the formation of income for the purposes of corporate income tax and the formation of the production value for the purposes of regional tax on production activities do not include grants from the State, the State administrations*

and public administrations to the Organiser for the organization of the event and realization of infrastructure projects of Expo Milano 2015. The contributions referred to in this paragraph shall not be considered for the purposes of calculating the pro-rata of deductibility of costs, nor are they calculated in reduction of losses carried forward for deduction of income generated in subsequent years".

Therefore, these contributions are not mentioned in *Modello Unico* SC, nor in the annual IRAP statement, nor relevant for the purposes of calculating the pro-rata of deductibility of costs or decrease of the tax losses carried forward.

5.2 Value Added Tax (VAT)

For VAT purposes, the Organiser benefits from both the *reverse charge,* and the VAT exemption regime reserved for Official Participants in article 10 of the Agreement with the BIE.

The application of the *reverse charge* is provided for in article 19, paragraph 2, of the Agreement, which extends said mechanism to the provision of services, including the provision of labour, rendered in the construction industry by contractors for the Organizer.

It is a specific case of application of the reverse charge system which differs from the typical *reverse-charge* of the area of subcontracting works referred to in article 17, paragraph 6, lett. *a)* of Presidential Decree no. 633 of 1972.

For the purpose in question, it shall be noted that the reverse charge mechanism provided for in said article 17 is applicable to the services rendered by subcontractors to companies operating in the building sector, which act as contractors or subcontractors, in turn, in relation to the realization of the building intervention. This regime, in essence, does not apply to services provided directly to the final client of the work but the chain of legal relations - attributable to the contract or subcontract - downstream of the client relationship.

Conversely, the reverse charge mechanism referred to in article 19, paragraph 2, of the

Agreement with the BIE is directly applicable in the relations between contractor and client (or rather, Expo 2015 S.p.A.).

In relation to the services rendered in the construction industry, the contractor thus issues the invoice to the Organiser without tax indication, inserting the words "reverse charge" and any reference to the specific provision that provides for the application in favour of Expo 2015 S.p.A. Within fifteen days of receipt of the invoice and with reference to the relevant month, the Organiser shall integrate it, indicating the VAT rate and amount. The invoice thus integrated shall be recorded by the Organizer in both the register of invoices issued, and in the purchase register.

Moreover, if the Organiser makes use of a third party to which it has delegated the functions and activities of the contracting authority, the *reverse charge* system referred to in article 19 of the Agreement would apply in relation to the provision of services in the construction sector rendered to the third party delegate, provided that the same shall act, in the performance of such functions and activities on the basis of a mandate with representation, that is to say in the name and on behalf of the Organiser. In this case, since the mandate is with representation, the contractor shall issue the invoice relating to the provision of services - without tax indication - directly to Expo 2015 S.p.A.

However, if the third party acts on the basis of a mandate without representation, the contractor shall issue the invoice to the third party delegate with the application of VAT in accordance with the ordinary method.

With reference to the VAT exemption regime normally reserved for Official Participants, it shall be observed that article 5, paragraph *1-quater* of Decree-Law of 26 April 2013, no. 43, converted with amendments by Law of 24 June 2013, no. 71, extends said scheme to the purchase of goods and services and imports by the Organiser *"limited to activities related to the realization and management of the Italian Pavilion"*. Therefore, the clarifications provided by resolution 15 January 2014, no. 10/E, previously commented, are also applicable to Expo 2015 S.p.A.

5.3 Benefits for the purposes of registration tax and other indirect taxes

Article 19, paragraph 6, of the Agreement with the BIE *"the acts, transactions and financial transactions relating to land, buildings and building areas required by the Organiser for the realization of Expo Milano 2015 are exempt from stamp duty, registration tax, mortgage and cadastral tax"*.

As explained previously in paragraph 3.3, the exemption is limited to the payment of taxes and does not extend the registration requirement, provided for by law.

6. OWNER

6.1 Importance of income

The Owner, according to the Agreement with the BIE, is the owner of the areas of the exhibition site of Expo Milano 2015 on which there is a surface right in favour of the Organiser.

The Owner is the company AREXPO S.p.A., holder of the business income to be determined according to the ordinary rules and subject to the accounting and declarative requirements normally provided by our legal system.

With regard to the determination of its taxable income, based on the combined provisions of articles 19 and 20 of the Agreement, the contributions paid by the State, State administrations and public administrations to the Owner to organize the event and the realization related infrastructure works do not form part of its business income, relevant for IRES purposes and for determination of its net production value, relevant for IRAP purposes.

Therefore, similarly to as previously clarified for the Organizer, such contributions are not mentioned in *Modello Unico* SC, nor in the annual IRAP statement, nor relevant for the purposes of calculating the pro-rata of deductibility of costs or decrease the tax losses carried forward.

6.2 Benefits for purchases

Article 20 of the Agreement extends to the Owner the reverse charge system proposed for the Organiser in relation to the provision of services, including labour, rendered to the latter in the construction industry by contractors. With regard to the characteristics of the scope of application of the *reverse charge* in question please refer to paragraph 5.2.

6.3 Benefits for the purposes of registration tax and other indirect taxes

In virtue of reference to article 19, paragraph 6, of the Agreement, the subsequent article 20 extends to AREXPO S.p.A. the same indirect taxation exemptions provided for the Organizer, commented in paragraph 5.3.

7. EXHIBITION AREAS AND RELATED SERVICES - VAT SYSTEM

As mentioned in the introduction, Expo Milano 2015 is an exhibition event during which Participants (Official and Unofficial) present their competences in relation to the theme of the exhibition, provide visitors with promotional information and present their products.

Therefore, for the purposes of VAT, this event can be considered like a fair or exhibition. In fact, as clarified by Circular 29 July 2011, no. 37/E, the term "*trade fairs and exhibitions*" include:

- services rendered by Fair entities that own exhibition spaces in favour parties that organize the event;
- services rendered by organizers to businesses and parties that participate in the exhibition event;
- services directly related to the set-up of the fair stands, the clients of the parties participating in the exhibition event.

The aforementioned standard document has also clarified the definition of **ancillary service** to the service provisions in question, providing a broader interpretation than the general concept of

ancillary, deduced by article 12 of Presidential Decree no. 633 of 1972, which requires, at the same time:

– the existence of a nexus of functional dependence between the provision of ancillary and main services;
– the necessary identity of the parties that carry out the main and accessory operation.

In particular, circular no. 37/E of 2011 clarifies that, notwithstanding the instrumental relationship between the provisions (main and accessory), the requirement of subjective identity shall be understood in the broadest sense. In essence, in order to qualify service provisions as ancillary it shall be appropriate to prescind from the identity of those involved. Therefore all services can be considered ancillary to an artistic, scientific or similar activity which without directly constituting such an activity, are a necessary precondition for the realization of the main activity, regardless of the party that carries it out.

In light of said clarifications, the services to be regarded as within the scope of provisions relating to trade fairs and exhibitions are those that, under the Agreement and the General Regulations, the Organiser is obliged to provide to Participants (Official and Unofficial) to enable their participation in Expo Milano 2015.

It shall be noted that, under the Agreement, the Organiser is obliged to implement all the infrastructural and organizational measures for the realization of the exhibition, including the provision of general services to Participants - such as telecommunications services, water, electricity (refer to article 15 of the General Regulations) - and the management of the shared exhibition areas.

The Organiser, at the request of a Participant, may also provide for the construction of the pavilions, as well as provide the service of managing the exhibition space of each Participant.

Therefore, Expo 2015 S.p.A. has a complex activity that, for VAT purposes, may be considered similar to that rendered by an organizer of trade fairs and exhibitions to parties that

participate in a specific exhibition event, allowing them to participate in the event.

Provisions related to fairs and exhibitions or ancillary to these provisions - in the aforementioned terms - also include services rendered to Participants (Official and Unofficial) by parties other than the Organiser, if functional or related to the realization of Expo Milano 2015 or participation at the exhibition event.

This includes, for example, the provision of services relating to the construction of pavilions by an Italian company, as well as those relating to the management of the same.

This approach is consistent with the orientation expressed by the EU Court of Justice in its judgement of 27 October 2011, Case C-530/09 with regard to the territorial importance, for VAT purposes, of the provision of services consisting in the provision of temporary fair and exhibition stands.

In this regard, the EU judges have clarified that the provision of services in the temporary provision of a fair or exhibition stand to clients is part of the activities carried out by an organizer of trade fairs or exhibitions when the stand is provided at a specific event *(i.e.* fair or exhibition), dedicated to a cultural, artistic, sports, scientific, educational, recreational or similar theme.

In terms of territorial importance, the fair services concerned follow different criteria depending on the *status* of the client and the place where said party is established.

If the client is not a taxable party for VAT, the territoriality of the provisions in question is governed by article *7-quinquies,* paragraph 1, lett. *a)* of Presidential Decree no. 633 of 1972, under which, the provision of services relating to cultural, artistic, sports, scientific, educational, entertainment and similar activities, including fairs and exhibitions, the provision of services of the organizers of such activities, as well as the provision of services ancillary to the above, shall be deemed rendered in Italy, provided they are physically carried out therein *(B2C).*

However, if the client is a taxable entity, the general criterion of territoriality shall apply as

provided for in article 7-ter, paragraph 1, lett. *a)* of Presidential Decree no. 633 of 1972 shall be applicable. Therefore said provisions shall be deemed rendered in Italy when rendered to VAT taxable parties established in Italy *(B2B).* It follows that if the client is a taxable party not established in Italy, the services in question are not territorially relevant in Italy (so-called outside the scope of VAT).

To verify the *status* of the client, circular no. 37/E of 2011 clarifies that, notwithstanding the application of the presumptions of taxable party provided for in article 7-ter, paragraph 2 of Presidential Decree no. 633 of 1972, when the client is an EU party, the EU VAT identification number communicated by the client to the same provider shall apply.

However, if the client is a non-EU party, any *status* of taxable party shall be demonstrated by other circumstances to clarify that it carries out a business, artistic or professional activity (for example, in this respect any certificate issued by the tax authorities of the non-EU State may be relevant).

Concerning the identification of the place of establishment of the client, in accordance with article 7, paragraph 2, lett. *d)* of Presidential Decree no. 633 of 1972, the following shall be deemed established in Italy:

- parties domiciled in the State or residing therein that have not established domicile abroad;
- a permanent establishment in the State of parties domiciled or resident abroad, limited to transactions rendered or received by it.

In applying said criteria, it is possible to determine the VAT regime of purchases made by Participants (Official and Unofficial) that are covered in the following paragraphs.

7.1 Acquisition of lots

Participants (Official and Unofficial) need to acquire the availability of the area *(i.e.* lot) for realization of their exhibition space *(i.e.* Pavilion).

To this end, it shall be noted that based on the agreement with the BIE, AREXPO S.p.A. is the

owner of the exhibition dedicated to the event, for which Expo 2015 S.p.A. has a surface right.

Article 14 of the General Regulations of Expo Milano 2015, provides that the lots for the construction of the pavilions are made available to participants by the Organizer for the period of time required for participation in the exhibition event. For Official Participants lots are made available free of charge. For developing countries (in short, "PVS"), Expo Milano S.p.A. shall also build and provide free of charge the exhibition Pavilion.

The service rendered by the Organiser for the provision of the lot forms part of the complex activity that the Organizer, under the Agreement, is required to perform for the realization of Expo Milano 2015. This provision therefore qualifies for VAT purposes, as service provision related to a fair and exhibition activity in the meaning clarified in paragraph 7.

Therefore, the provision of the lot is similar to a provision relating to a trade fair and exhibition event, whose territorial importance in Italy - as explained in the previous paragraph - is governed by articles 7-ter, paragraph 1, lett. *a),* and *7-quinquies,* paragraph 1, lett. *a)* of Presidential Decree no. 633 of 1972.

Therefore, in applying the above territoriality criteria, the provision of the lot to an Official or Unofficial Participant is, for VAT purposes, territorially relevant in Italy *(i.e.* the place where the exhibition event takes place), when the Participant is not taxable (therefore, without a VAT identification number), and when it is a VAT taxable party established in the territory of the State.

Of course, when the Participant is Official, the Organiser is obliged to issue an invoice in tax exemption Regime ex article 10, paragraph 5, of the Agreement with the BIE.

If the provision of the lot by the Organiser is outside the scope of VAT for lack of territorial assumption (ex. client unofficial participant taxable party), Expo 2015 S.p.A. shall still issue an invoice in accordance with article 21, paragraph *6-bis* Presidential Decree no. 633 of 1972. In particular, the invoice shall indicate “reverse charge” when the participant is an EU party, and

"transaction not subject" when the Participant is a non-EU taxable party.

Finally, please note that if the elements apply to configure, for VAT purposes, a permanent establishment in Italy of the Participant, in accordance with the general territoriality criterion provided for in article *7-ter,* paragraph 1, lett. *a),* Presidential Decree no. 633 of 1972, the service rendered by the Organiser is territorially relevant in Italy and subject to VAT therein by application of the rate in ordinary measure (22 per cent) when the provision of the lot is attributable to said permanent establishment.

7.2 Construction and acquisition of pavilions

The Pavilion is the exhibition structure of each Official and Unofficial Participant.

The General Regulations of Expo Milano 2015 provide for the possibility that the pavilions be realized by the Organizer, which then makes them available to the Participants at no charge or for a fee, or directly by the Participants (Official or Unofficial).

When the Pavilion is realized by Expo 2015 S.p.A., the subsequent provision of the same to the Participants qualifies for VAT purposes as a provision for an exhibition and fair activity, for which the criteria of territoriality and invoicing were outlined in paragraphs 7 and 7.1, to which reference is made.

Similar considerations with reference to the case in which the Participant, either directly realizes its own Pavilion. In this case, the provision of services for the construction and assembly of the structure within the exhibition site - such as, for example, assembly, transportation of materials and the laying of cables - can be considered part of the services relating to an exhibition and fair, allowing participation in the exhibition.

The same qualification shall also be attributed to services related to the subsequent dismantling of the Pavilion.

It follows that, in order to identify the place where the services in question are considered effective, reference shall be made to the same connecting criteria already covered in the previous paragraph in relation to the territorial importance of provision of lots by the Organizer, to which reference is made.

For all practical purposes, it shall be noted that when an Official Participant, through its Section General Commissariat, enters into a contract with a foreign company, to which it entrusts the realization and/or management of its exhibition space, and the latter, in turn, subcontracts the work, in whole or in part, to an Italian company, the service rendered by the Italian company to the foreign contractor maintains its objective nature and, therefore, qualifies as provision of services relating to an exhibition event.

It follows that - in application of the criteria mentioned regarding territorial connection and, in particular, the general criterion laid down in article 7-ter, paragraph 1, lett. *a)* of Presidential Decree no. 633 of 1972 - the service rendered by the Italian company does not have territorial relevance in Italy as the client*(i.e.* foreign contractor) carries out an economic activity in its own country or, in other words, is a taxable entity.

For the purpose in question, it is appropriate to recall that the VAT exemption regime of purchases of goods and services by the Section General Commissariats *(i.e.* Official Participants), required under said article 10, paragraph 5 of the Agreement shall also apply if the services in question are rendered to a party delegated by the same Official Participant on the basis of a **mandate with representation** (i.e. a party acting in the name and on behalf of the Official Participant or Section General Commissariat).

In this case, the representative shall submit to the provider the related proxy and the latter shall issue an invoice for the service provided, under the tax exemption regime, directly to the Official Participant.

Otherwise, the VAT exemption regime is not applicable if the provisions in question are

rendered to a party that acts on behalf of an Official Participant (or rather the Section General Commissariat), but in their own name (*i.e.* **mandate without representation**).

In this case, under article 3, paragraph 3, of Presidential Decree no. 633 of 1972, the services rendered or received by the mandate without representation are considered services also in relations between mandate principal and agent, and, therefore, from an objective point of view are autonomous operations relevant for VAT purposes. Therefore, the service provider (territorially relevant in Italy) is required to issue an invoice with VAT in respect of the mandate without representation. The latter, in turn, invoices the Official Participant (or rather the Section General Commissariat), the same services rendered by the provider, plus any commission due under tax exemption in accordance with article 10, paragraph 5, of the Agreement with the BIE.

It is understood that the services provided for the realization of the Pavilion provided to an Unofficial Participant, if territorially relevant in Italy, under the territoriality criteria set out in paragraph 7, are taxed with application of the VAT rate of the operation rendered.

7.3 Management services of the exhibition area

The Organizer can provide, on behalf of each Participant, the management of the common exhibition spaces and can also provide services to manage individual pavilions. Although said operations qualify for VAT purposes as provisions of services relating to an fair and exhibition activity and, therefore, for the purposes of territorial relevance, the criteria laid down in articles *7-ter* or 7-*quinquies* of Presidential Decree no. 633 of 1972, as set out in paragraph 7 apply.

Moreover, if said services are territorially relevant in Italy, the VAT regime applicable to them varies depending on whether the client is an Unofficial or Official Participant (or rather the Section General Commissariat).

In the first case, the exhibition services purchased by the Organizer, also in the name and on behalf of the Unofficial Participant, shall be taxable for VAT with application of the rate of the operation

rendered.

However, if the Organizer purchases services relating to the management of the exhibition area of an Official Participant, the applicable VAT regime is different depending on whether Expo 2015 S.p.A. acts on the basis of a mandate with or without representation.

In the first case, purchases from third-party providers are not taxable to VAT pursuant to article 10, paragraph 5 of the Agreement. Since it is a mandate with representation, for services rendered, providers issue an invoice directly to the Section General Commissariat.

However, if the Organizer purchases the services in question on behalf of Official Participants (or rather the Section General Commissariat), but in its own name, the services shall be subject to VAT at the rate of the operation rendered. In this case, the provider issues an invoice to the Organiser. The latter, in turn, shall charge the relative cost to the Official Participants under the tax exemption regime under said article 10.

7.4 General services

Under article 15 of the General Regulations, the Organizer shall also provide Participants (Official and Unofficial) with general services, such as the provision of electricity and water, as well as telecommunication services.

Consistent with as explained above, these services also need to be considered related to the exhibition and, therefore, have territorial relevance in Italy, for VAT purposes, in accordance with the criteria set out in paragraph 7.

After verifying the territorial relevance in Italy, the provision in question rendered to Official Participants (or rather the Section General Commissariat), are not subject to VAT pursuant to article 10, paragraph 5, of the Agreement, whether purchased directly or through the Organizer, to which Participants have conferred a mandate with representation. In this case, the supplies are invoiced by

the utility companies directly to the Official Participant.

However, if the Official Participants acquire the services in question by means of the Organizer, to which they have conferred a mandate without representation, the provisions shall be subject to VAT at the related rate. In this case, the invoice is issued by the supplier with VAT charged directly to the Organizer, which in turn charges the cost to the Official Participant, to the extent of its competence, under VAT exemption regime referred to in said article 10.

When the services in question are rendered to an Unofficial Participant, if territorially relevant in Italy, they are subject to VAT at the rate of the operation also if purchased through Expo Milano 2015.

8. PVS: CONSTRUCTION AND MANAGEMENT OF THE PAVILION - GENERAL SERVICES

In accordance with the General Regulations, article 13 of special Regulation no. 2 of Expo Milano 2015 provides that in order to contribute to the strengthening of the role of the developing countries (in short, "PVS") within the Exhibition, the Organiser will promote their participation in the event. In particular, the Organiser may wholly or partly incur charges relating to:

- the construction, design, assembly and dismantling of the Pavilion;
- consultancy and assistance in the development of the project *concept* of the exhibition space;
- the cost of maintenance and provision of services (gas, water, heating/air conditioning, energy);
- customs operations, transport and insurance;
- the creation of promotional materials and communications, including video and images to be projected in the virtual exhibition spaces;

- the cost of food, accommodation, transportation, training, etc., for the staff responsible for the preparation and functioning of the exhibition space.

The rules for participation in the event by developing countries are in any case covered by the participation agreement that the Organiser enters into with each of them.

For the purposes of VAT, it is necessary to point out that if - based on said agreement - Expo 2015 S.p.A., in carrying out the activities listed above, operated on the basis of a mandate without representation, it would not lose the right to deduct the tax charged by the provider, as these transactions are attributable to its complex activities as Organizer, in the terms described above.

Of course, if the Organizer operated on the basis of a mandate with representation, the provider would directly invoice to the Section General Commissariat of the developing countries under the tax exemption regime. VAT referred to in article 10, paragraph 5, of the Agreement.

For the purposes of direct taxes, it is appropriate to clarify that if Expo 2015 S.p.A. carried out the above activities on the basis of a mandate with representation, it would still be entitled to deduct the relative costs, in the amount stated in the participation agreement. Although the invoice for the goods and/or services acquired is issued by the provider directly to developing countries under VAT exemption regime, it is believed that this fact does not affect the relevance of the relative costs to the business income earned by the Organiser. In fact, the complex activity of Expo 2015 S.p.A. also includes the incurring of expenses relating to participation in Expo 2015 of developing countries, including the realization and management of their pavilions, as required by said Regulations.

9. REALIZATION AND/OR MANAGEMENT OF THE PAVILIONS OF OFFICIAL PARTICIPANTS THROUGH GENERAL CONTRACTOR

For the realization and/or management of their own Pavilion Official or Unofficial Participants may use a *General Contractor* (hereinafter referred to as "GC"), i.e. a person or entity to whom they entrust the signing of the necessary contracts for the realization and/or management of their own

Pavilion.

The *General Contractor* may be specifically delegated by an Official Participant (or rather the Section General Commissariat) to perform the function of the Section General Commissariat.

When it does not cover this function, the GC generally operates on the basis of a mandate with representation.

For the purposes of direct taxes, it is believed that in the event that the GC is a foreign company, which operates on behalf of an Official Participant, conducting the realization and/or management of the Pavilion in Italy - even if is a business - it does not necessarily determine, for the purposes in question, the constitution of a permanent establishment of the Participant. A different interpretation would penalize Official Participants, discouraging their participation in Expo Milano 2015 when they are unable to realize and/or directly manage their own Pavilion.

In fact, the realization and/or management of the Pavilion by a GC, is still an activity that allows the Official Participant to take part in the event, attributable as such in the context of the institutional exhibition and non-commercial activities of the Participant, with reference to which article 10, paragraph 1, of the Agreement, provides exemption from all direct taxation on property, assets and related income.

On the other hand if the realization and/or management of the Pavilion were directly by the Official Participant, related income, property, assets would still be exempt from any income tax, as well as for IRAP purposes.

In respect of the same purposes, there can be a similar conclusion when the GC acts in the name and on behalf of an Unofficial Participant and its activity is aimed at the realization and/or management of the Pavilion of the latter.

In fact, article 16 of the Agreement with the BIE, albeit with different wording, is believed to meet the same "benefit" purposes of article 10 of the Agreement.

Of course, if the Unofficial Participant had to carry out a commercial activity in its own Pavilion, because for example it is not limited only to display of products, but also the sale, a permanent establishment would be constituted attributable to the same.

For VAT purposes, the services related to the realization and/or management of the Pavilion maintain the status of services relating to an exhibition and fair even if purchased by the GC. In fact, in any case, they are functional operations for participation in Expo Milano 2015.

Therefore, in terms of territorial relevance, assuming that the GC is subject to VAT *(B2B),* the general connecting criteria referred to in article *7-ter* of Presidential Decree no. 633 of 1972 shall apply.

In particular, the services provided to the GC are:

- territorially relevant in Italy if the GC is a VAT taxable party established in the territory of the State;
- outside the scope of VAT if the GC is a taxable party not established in Italy.

However, if the GC does not carry out business in its country and, therefore, is not subject to VAT, for purposes of territoriality, the derogation criteria referred to in article *7-quinquies,* lett. *a)* Presidential Decree no. 633 of 1972 shall apply.

In this case, the services (exhibition) rendered to the GC shall be subject to VAT in Italy *(i.e.* the place where the exhibition event takes place).

Moreover, the VAT regime of purchases made by the GC is different depending on the procedure by which the latter acts, i.e. depending on whether the same acts in the name and on behalf of the Official Participant (mandate with representation), or in the name but on behalf of the Official Participant (mandate without representation).

In particular, if the GC acts on the basis of a mandate with representation, the provision of services or the sale of goods - whether territorially relevant in Italy - in respect of the GC deduct the

same VAT exemption applicable to the Official Participant, under article 10, paragraph 5 of the Agreement.

The provider then issues the invoice directly to the Official Participant under tax exemption regime. The GC invoices, in turn, its fees to the Official Participant under tax exemption regime, provided that

- on the basis of art. *7-ter* of Presidential Decree no. 633 of 1972 - said provision is territorially relevant in Italy.

However, if the GC acts on the basis of a mandate without representation, or the basis of a contract, the provision of services or the supply of goods

- if territorially relevant in Italy - to the GC deduct VAT according to the rules ordinarily provided. In fact, as explained in the previous paragraph, under article 3, paragraph 3, of Presidential Decree no. 633 of 1972, the services rendered or received by the mandate without representation are considered services also in relations between mandate principal and agent, and, therefore, from an objective point of view are autonomous operations relevant for VAT purposes.

Therefore, the provider is required to issue an invoice to the GC with the application of the VAT rate expected for the operation rendered.

The GC, in turn, invoices the Official Participant the same services rendered by the provider, plus any fee/commission due, under tax exemption pursuant to article 10, paragraph 5, of the Presidential Decree no. 633 of 1972.

The provider is still required to issue invoice for operations not territorially relevant in Italy in the cases provided for in article 21, paragraph *6-bis* Presidential Decree no. 633 of 1972 (for more details, refer to paragraph 7.1).

10. ACCESS RIGHT - VAT RATE

In order to identify the place of territorial importance of access rights to Expo Milano 2015, the derogation criterion provided for in article *7-quinquies* of Presidential Decree no. 633 of 1972 apply, under which the place of services for access to cultural, artistic, sports, scientific, educational, entertainment or similar events, such as fairs and exhibitions, as well as ancillary services related to access, coincides with the place where said events actually take place, regardless of the *status* of the client (taxable or non-taxable).

Therefore, notwithstanding the above, the territorial relevance in Italian of access rights to the exhibition, the VAT regime applicable in practice is clear in article 19, paragraph 3, of the Agreement.

The latter provision states that the services rendered by the Organiser for access to Expo Milano 2015 - among which it is attributable to the present case - are not among the services exempt from VAT under article 10, first paragraph, no. 22) of Presidential Decree no. 633 of 1972 *("in-house services of libraries, clubs and the like, and those related to visiting museums, galleries, art galleries, monuments, villas, palaces, parks, botanical and zoological gardens and the like").*

It follows that the access rights are service provisions subject to VAT and, in particular, pursuant to article 46-ter, paragraph 4, of the Decree-Law no. 69 of 2013, shall be subject to tax in Italy at the reduced rate of 10 percent.

In particular, the provision of the services in question are related among those referred to in no. 5 of Table C, annexed to Presidential Decree no. 633 *("exhibitions and trade fairs,* scientific, artistic and industrial exhibitions, film festivals recognized by decree of the Ministry of Finance and *similar events")* and, therefore, shall be certified with access rights issued by the relevant cash registers or ticket offices pursuant to the decree of 13 July 2000, of the provisions of the Agency Director dated 23 July 2001, 22 October 2002, 3 August 2004 and 4 March 2008 and, as regards access titles to Expo Milano 2015, the Provisions of the Revenue Agency Director of 9 May 2014.

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The Regional Directorates shall ensure that the principles enunciated and instructions provided with this circular be duly observed by the Provincial Offices and the related offices.

AGENCY DIRECTOR
Rossella Orlandi