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Litigation

The class action reform (a procedural tool available to solve BTB disputes as well)

On April 3, 2019 Italian Parliament approved Bill of law no. A.S. 844 for the reform of the rules governing collective redress and class action. The reform law was published in the Official Gazette on April 18, 2019 and will enter into force 12 months from that date. The "new" class action will apply only to unlawful conduct carried out subsequent to its coming into force.

Class action becomes a general procedural remedy, available not only to consumers and users, but to everyone claiming compensation for the violation of "homogeneous individual rights". This means that a class action may also be initiated by a business entity against another business entity.

The reformed law introduces several new aspects of considerable importance, all of which are essentially aimed at extending and facilitating the use of this procedural tool:

- Stages of the proceedings. The new class action will be split into three stages: the first for the assessment of the admissibility of the action; the second dedicated to the decision on the merits of the case; the third - newly established by the reform - for the evaluation of the requests for opting in and the quantification of the sums due to the members of the class. This last phase will be managed by a Delegated Judge.
- Evidence-gathering profiles - Presumptions and "Discovery". The Court shall use statistical data and simple presumptions to ascertain the liability of the respondent. Upon reasoned request by the petitioner, the Judge may order the resistant (only) to produce relevant evidence and documents within its possession. This order may also cover 'categories of evidence', identified by the common features of the evidence falling within their scopes (e.g. the time at which the evidence was formed, the subject matter and contents of the evidence requested to be produced). If the resistant refuses or fails, without good reason, to comply with the relevant order to produce evidence, it may be sentenced to a fine of between € 10,000.00 and € 100,000.00, thus introducing for the first time a procedural tool similar to the US discovery to the Italian legal system.
- Late opt - in. It will now be possible to join the class action not only after the publication of the order ruling on the admissibility of the action (as currently prescribed), but also after publication of the decision ruling on the case and establishment of the liability of the resistant. This is without doubt one of the most controversial points of the reform, sparking concern particularly amongst the business community about the practical consequences of this provision, which essentially allows one of the parties - the class members - to avoid the risk of losing the case (as participants will only opt-in in the event of a positive outcome of the proceedings), and puts the other party - the resistant - in a position where it is unable to assess the possible economic impact of the case during the proceedings.
- Common representative. By means of the decision ruling on the merits of the case, the Court will appoint a common representative of the class members, who will be charged with the task of preparing and submitting a distribution project for the class members to the Delegate Judge, taking a position on each individual request. This is a new subject, borrowed from bankruptcy law. The common representative will in fact be a third party, similar in some respects to a bankruptcy trustee and selected from a pool of individuals qualified to perform the role of bankruptcy trustee. The common

representative will have to carry out an initial assessment of the applications for membership; in carrying out these activities, he/she will be a public officer.

- **“Reward fee”.** The reform introduces the obligation for the unsuccessful respondent to pay the common representative and the plaintiff’s attorney a “reward fee”, set as a percentage of the total amount due to the members as compensation. This is also one of the most highly debated points of the reform; in fact the business community is concerned that the “reward fee” may result in a punitive damage and that the high amounts involved may render class action - as it is in the US - a relevant money-making business.

The law reform will certainly increase recourse to class action as procedural tool, but may also lead to abuse similar to that reported in the US by authors.

Tax incentives

Improvements to the special tax regime for the Italian “inbound workers”

The 2019 Italian growth decree introduced several new aspects with regard to the Italian “inbound workers” regime.

The regime is optional, not revocable, special, available to individuals on condition that they:

- are employees (e.g. salaried workers and companies’ directors) or self-employees (e.g. consultants), regardless of their citizenship/State of residence and even in the lack of former registration in the “AIRE” list. With the late amendment, the requirement of being in possession of high qualification or specialization or holding executive roles is not required anymore;
- have not been resident for tax purposes in Italy in the 2 years prior to the relocation (instead of the 5 years term previously set);
- transfer their tax residency from abroad to Italy, committing to be resident in Italy for at least 2 years;
- carry out their activity mainly in Italy.

The inbound workers regime allows a 70% exemption for the first 5 years or alternatively a 90% exemption for the first 5 years for those inbound workers moving to one of the Southern Regions of Italy (i.e. Abruzzi, Apulia, Basilicata, Calabria, Campania, Molise, Sardinia and Sicily).

The inbound workers regime allows an extension of 5 more years where: (i) the inbound worker or a family member purchases a residential property in Italy (regardless of the value or size of the property) during the twelve months before the transfer to Italy or after the transfer; or (ii) the inbound worker has at least an under-age child or an economically dependent children (even in pre-adoptive care). During the extension window, the exemption is 50%, or alternatively 90% for those inbound workers with at least three under-age children or an economically dependent children (even in pre-adoptive care).

The inbound workers regime expires after 5 (or 10) years and is not renewable. After expiration, the income are subject to the ordinary tax regime. The inbound workers regime terminates when the taxpayer transfers his/her tax residence outside Italy.

The termination and the expiration of the inbound workers regime prevents the taxpayer from a new option and therefore as long as he is fiscally resident in Italy, he will remain subject to the ordinary Italian individuals income tax regime (i.e. taxation under worldwide income principle).

Italian taxes on real estate and on financial assets held abroad (so-called, respectively, “IVIE” and “IVAFE”), as well as inheritance and gift taxes ordinarily apply to the inbound workers.

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For any further clarification or research please contact:

Emanuele Grippo
Partner

 Milan

 +39 02 763741

 emgrippo@gop.it



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