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The Italian Constitutional Court strikes down the Robin Hood Tax

On 11 February 2015 the much awaited ruling of the Italian Constitutional Court on the Robin Hood Tax has been published, declaring the Robin Hood Tax unconstitutional. The removal of the Robin Hood Tax is welcomed by all the energy operators, since it determines a significant lightening of the tax burden and, in turn, a boost of companies' earnings. The Robin Hood Tax, however, is removed only from 12 February 2015 onwards.

1. The Robin Hood Tax

The so called "Robin Hood Tax" (introduced in 2008, and subsequently reshaped in a number of occasions) consisted, in extreme essence, in a 6.5 per cent increase of the corporate income tax rate (IRES) applied to energy and utilities companies (*e.g.* entities active in the oil, gas and electricity fields) that exceeded certain revenues thresholds¹.

Starting from 2011, the Robin Hood Tax became applicable also to companies active in the renewable energy sector.

The Robin Hood Tax increased significantly the overall tax rate applied to the above mentioned companies compared to the ordinary tax rate applied to companies in Italy and, for this reason, it has been fiercely contested by operators.

2. The Ruling of the Italian Constitutional Court

Le Energy companies have always questioned the compliance of the Robin Hood Tax with the Italian Constitution. Many of them have formally challenged the Robin Hood Tax claiming that it conflicted (among others) with the principles of equality of treatment and proportionality set out under Articles 3 and 53 of the Italian Constitution.

With ruling No. 10/2015 the Constitutional Court upheld the claims and struck down the Robin Hood Tax (more specifically, Section 81, paragraphs 16, 17 and 18 of Law Decree no. 112/2008).

However, despite according to Italian law a similar ruling should have removed the Robin Hood Tax retroactively, the Italian Constitutional Court expressly limited its ruling to the future, in order to avoid the huge adverse effect that a retroactive ruling would have had on Italian public accounts.

As a consequence, the Robin Hood Tax is removed starting from 12 February 2015², and it will not be possible to recover the higher taxes already paid due to the application of the Robin Hood Tax.

3. Effects of the Ruling

The removal of the Robin Hood Tax allows energy companies to benefit from a significant lightening of the tax burden, with the ordinary corporate income tax rate reducing from 34 per cent to 27.5 per cent.

This is expected to result in a boost of energy companies' earnings, which may partly mitigate for owners of photovoltaic plants the negative impact suffered due to the reshaping of the incentives recently occurred in Italy.

¹ Currently Euro 3 Million of revenues and Euro 300,000 of taxable income.

² *I.e.* the day after the publication of the ruling in the Italian Official Gazette, occurred on 11 February 2015.