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### Italian Draft Law No. AS 1376 - strengthening the protection of taxpayer's rights in the context of on-site tax audit

On 6 February 2025, the European Court of Human Rights (“**ECHR**”) issued the decision “*ItalgommePneumatici S.r.l. and Others v. Italy No. 36617/18*” (the “**Decision**”) ruling that national regulations allowing authorities to exercise broad search powers without providing reasons that justify the relevant actions in the context of tax audits are not in line with Article 8 of the European Convention of Human Rights.

The case involved the access and inspection by the tax authorities at the premises of 13 companies, which led to the examination, the copying and the seizure of mandatory tax and accounting documents, as well as various other documents deemed relevant to the tax assessment.

The applicants complained about the lack in the national regulations of procedural safeguards against possible abuse, arbitrariness and excessive discretionary search powers conferred to the authorities.

The ECHR shared the view of the applicants, highlighting absence of adequate procedural limitations to the inspection powers with the consequence of allowing “*unfettered discretion with regard to both the conditions in which the contested measures could be implemented and the scope of those measures*” ... “*The domestic legal framework should impose on the domestic authorities an obligation to provide reasons and accordingly justify the measures in question*”.

Moreover, the Court affirmed the principle that the legality, necessity, and proportionality of tax inspections must be subject to effective judicial control, both prior to and after the inspections, in order to ensure sufficient procedural guarantees, especially with regard to the use of documents acquired during inspections.

Following the Decision, with Draft Law No. AS 1376, a law proposal was submitted to the Parliament on February 2025 with the aim to introducing new general measures concerning tax audits and inspections.

The Draft Law introduces a new requirement: the authorization of the public prosecutor office to the tax authorities to access premises that are used also as residence of individuals must be motivated on the basis of elements already acquired by the tax authorities.

The Draft Law envisages also a new provision that grants an additional judicial protection to taxpayers allowing them to request before the President of the competent Tax Court of Second Instance (C.G.T. II) the annulment of the authorization granted by the competent judicial authority (with consequent declaration as unusable of the documentation and information gathered). The request shall be filed within 20 days from access to the premises or the searches.

The Draft Law, if approved, is certainly a positive step towards the quality requirements imposed by European Convention on Human Rights.

However, it seems that the Draft Law does not to entirely address the infringements highlighted by the ECHR; the legislator should consider broadening the scope of the Draft Law to fully align with the Decision.

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