

Service agreements and the “Tax Decree”: a new set of rules

Starting from January 1, 2020, the new measures against unlawful staff-leasing as introduced by Decree Law 124/2019 (the so-called "**Tax Decree**"), amending Art. 17-bis, Decree no. 241/1997, became effective.

The new rules apply to any service agreements or contracts (or subcontracts), irrespective of their legal name, having the following features:

- prevalent use of manpower (so-called "labor-intensive" agreements);
- activities carried out at the principals' premises, using goods and devices provided by the principal;
- overall yearly consideration for the services exceeding Euro 200,000.

According to the wording and the spirit of the Tax Decree, new rules do not apply to regular staff leasing agreements.

Tax Decree introduces new obligations to be borne by both parties of the service agreement:

- **the principal** must require the contractor (or subcontractors) to provide documentation giving evidence of the proper calculation and actual payment of withholdings related to the employees engaged in the relevant service agreement;
- **the contractor** (and each subcontractor) must send, within 5 days following the deadline to pay the withholdings, the following documents to the principal:
 1. withholdings payment forms;
 2. list of the personnel, identified with their fiscal code, engaged in the services during the previous month, indicating: (i) details of hours worked within the context of the service agreement at issue; (ii) relevant consideration; and (iii) details of withholdings applied during the previous month within the context of the service agreement.

Breach of the above obligations by the contractor (or subcontractors) will result in the principal's obligation to suspend the payment of the services fees, for an amount equal to the withholdings, up to a cap of 20% of the services fees. Within the following 90 days, the principal must communicate the violation to the competent tax authority (*Agenzia delle Entrate*). During said suspension, the contractor (or the subcontractors) will not be entitled to start an injunction process to recover their credits.

Should the principal breach the above obligations, it shall pay to the Italian tax authority a sum equal to the contractor's (or sub-contractors') fines for violation of the withholding obligations.

The contractor (and subcontractors) are exempted from the above obligations, if they provide the principal with a certification to be issued by the Italian tax authority, valid for 4 months, giving evidence of certain tax compliance requirements as of the last day of the previous month. At the moment, there are no practical guidelines by the Italian tax authority regarding this certification, since the first deadline to comply with the above contractors' documental obligations will expire on February 24, 2020.

Moreover, the certification allows contractors (and subcontractors) to off-set their credits and debts *vis-à-vis* Italian social security authorities with reference to the personnel engaged in the services (in lack of the certification, off-setting is not possible with reference to said personnel).

Finally, Resolution no. 108/2019 by the Italian tax authority clarified that the Tax Decree applies also to service agreements currently in force; therefore, in addition to a general review of service agreement templates, also these currently in force shall be amended in light of these newly enacted tax rules.




This document is delivered for informative purposes only.

It does not constitute a reference for agreements and/or commitments of any nature.

For any further clarification or research please contact:




Alessandra Ferroni
Partner

*Co-Head Labour Law
Department*

 Milan
 +39 02 763741
 aferroni@gop.it




Saverio Schiavone
Partner

*Co-Head Labour Law
Department*

 Rome
 +39 06 478751
 sschiavone@gop.it




Matteo Fusillo
Partner

Labour Law

 Rome
 +39 06 478751
 mfusillo@gop.it




Raffaella Betti Berutto
Partner

Labour Law

 Rome
 +39 06 478751
 rbetti@gop.it




Cristina Capitanio
Partner

Labour Law

 Rome
 +39 06 478751
 ccapitanio@gop.it

Emanuele Panattoni
Partner

Labour Law

 Milan
 +39 02 763741
 epanattoni@gop.it



INFORMATION PURSUANT TO ARTICLE 13 OF EU REGULATION NO. 2016/679 (Data Protection Code)

The law firm Gianni, Origoni, Grippo, Cappelli and Partners (hereafter "the Firm") only processes personal data that is freely provided during the course of professional relations or meetings, events, workshops, etc., which are also processed for informative/divulgence purposes. This newsletter is sent exclusively to those subjects who have expressed an interest in receiving information about the Firm's activities. If it has been sent you by mistake, or should you have decided that you are no longer interested in receiving the above information, you may request that no further information be sent to you by sending an email to: relazioniesterne@gop.it. The personal data processor is the Firm Gianni, Origoni, Grippo, Cappelli & Partners, whose administrative headquarters are located in Rome, at Via delle Quattro Fontane 20.