

## FOCUS: PI INSURANCE – CONFORMITY CERTIFICATION – NEW RULES

Many undertakings operating in the professional indemnity insurance sector traditionally offer policies covering the civil liability of certified chartered accountants and bookkeepers arising from the issue of conformity certification (“certificato di conformità”) for taxpayers’ tax returns.

The Simplification Decree (Legislative Decree no.175 of 21 November 2014) – laying down provisions on the simplification of tax matters and pre-compiled income tax returns forms (published in the Official Gazette no.277 of 28 November 2014) – amended:

(i) article 39, paragraph 1, letter a) of Legislative Decree no. 241 of 9 July 1997, which now envisages the following: “...With the exception of cases where a corrective tax return is submitted, if the false conformity certification relates to the tax return submitted as specified in article 13, of Ministerial Decree no. 164 of 31 May 1999, the persons indicated in article 35 shall be obliged to pay the State or other tax authority a sum which is equal to the amount of the tax, penalty and interest payable by the taxpayer in accordance with article 36-ter of Presidential Decree no. 600 of 29 September 1973, provided that the false certification has not been issued as a result of the fraudulent or seriously negligent conduct of the taxpayer”;

(ii) article 22, paragraph 1 of Ministerial Decree no.164 of 31 May 1999 which now reads as follows: “Professionals and certification authorities [as referred to above] draw up a civil liability insurance policy, with a policy limit adjusted to the number of assisted taxpayers, as well as to the number of conformity certifications, asseverations and tax certificates issued and, in any case, of no less than three million euros, in order to ensure for their clients compensation for damages caused as a result of the service provided as well as ensure that the sums pursuant to article 39, paragraph 1, letter a) of Legislative Decree no. 241 of 9 July 1997 are paid to the government budget or that of any other tax authority”.

The Revenue Agency (Emilia Romagna Regional Agency), has recently issued a circular which reads as follows:

“in accordance with the new provisions laid down in art. 22, paragraph 1 of Ministerial Decree no. 164/1999, the civil liability insurance policy must: a) have a policy limit “of no less than three million euros”; b) ensure “that the sums pursuant to article 39, paragraph 1, letter a) of Legislative Decree no. 241 of 9 July 1997 are paid to the government budget or that of any other tax authority”.

The new provisions introduced by the Simplification Decree gave rise to a number of uncertainties in relation to the following main aspects:

- i. the nature of the payment due to “*the State or other tax authority* [of the] *sum which is equal to the amount of the tax, penalty and interest payable by the taxpayer*” and in particular whether such sum is due on account of fine or as a result of a new kind of joint liability (between the accountant and the tax payer);
- ii. in the event that it is a fine, whether the new provisions have introduced a special derogation to the existing provisions in the matter of un-insurability of fines;
- iii. the nature of the liability of the accountant: civil or administrative (i.e. for damages to the public purse);
- iv. in case of payment of the indemnification to the accountant under the new provisions, whether insurers have recourse action against the tax payer.

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