

LP ADVISORY

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1. Tax measures for corporate welfare - fringe benefits for the year 2023

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Tax measures for corporate welfare - fringe benefits for the year 2023

To all the customers

The Law of 3 July 2023 n. 85, converting the Decree Law of 4 May 2023 n. 48, confirms, exclusively for the 2023 tax period, that the value of the goods sold and services provided to employees with dependent children, including recognized children born out of marriage, adopted or entrusted children, who are in the conditions provided for by art. 12, paragraph 2 of the TUIR, as well as the sums paid or reimbursed to them by the employer for the payment of domestic utilities of the integrated water service, electricity and natural gas, do not contribute to forming the taxable income for tax purposes on the income of natural persons (IRPEF) in the total limit of 3,000 euros, notwithstanding the provisions of article 51, paragraph 3, of the Consolidated Law on Income Taxes (TUIR), approved by decree of the President of the Republic 22 December 1986, n. 917.

Regarding the non-competition in the formation of taxable income for the purposes of personal income tax (IRPEF), for purely operational purposes, the indications provided by the Revenue Agency with the aforementioned circular no. 35 of 04 November 2022 which, combined with the new regulatory provisions, are summarized below.

Subjective scope

The discipline applies to holders of income from employment and income assimilated to that of employment for which the income is determined according to the provisions contained in article 51 of the TUIR.

The fringe benefits in question can also be paid by the employer ad personam.

Objective scope

Notwithstanding article 51, paragraph 3, of the TUIR and limited to the 2023 tax period, art. 40 of Legislative Decree 48/2023, confirms the maximum exemption limit of 3,000 euros and, to expand the types of fringe benefits granted to the worker, derogates the discipline as follows:

- the tax exemption threshold for fringe benefits of up to €3,000 is reserved exclusively for employees with dependent children (the latter having a total income not exceeding €2,840.51 gross of deductible and raiseable charges, for children aged up to at twenty-four years, to 4,000 euros);
- for workers who do not have dependent children, the ordinary discipline remains, pursuant to article 51, paragraph 3, of the TUIR according to which the value of the goods sold and the services provided does not contribute to forming the employee's income if the total amount is not higher than 258.23 euros in the tax period;
- the fringe benefits granted to workers also include the sums paid or reimbursed to them by the employers for the payment of domestic utilities for the integrated water service, electricity and natural gas;
- the maximum limit of non-competition with the employee income of the goods sold and the services provided, as well as the sums paid or reimbursed for the payment of domestic utilities, is raised (exclusively for workers with dependent children) from Euro 258.23 to Euro 3,000.

The notion of income from employment also includes goods sold and services provided to the worker's spouse or family members, as well as goods and services for which the right to obtain them from third parties is attributed.

Extension of the non-competition quota to domestic users

The law establishes that, in addition to the value of the goods sold and the services provided, the sums paid or reimbursed by the employer to its employees «for the payment of domestic

utilities for the integrated water service» do not contribute to the formation of employee income, electricity and natural gas".

These utilities must relate to residential properties owned or held, on the basis of a suitable title, by the employee, his spouse or his family members, regardless of whether or not they have established their residence or domicile, provided that they actually bear it the related expenses.

Finally, it is possible to include within the scope of application of the standard also utilities for domestic use (for example water or heating) - in the name of the condominium - which are divided between the condominiums (for the portion remaining borne by the individual condominium) and those for which, although the utilities are registered in the name of the owner of the property (landlord), a form of analytical and non-flat rate debit is expressly provided for in the lease contract to be paid by the worker (lessee) or by his spouse and family members, always on condition that these parties actually bear the related expense.

It remains understood that, in the latter case, the landlord who is reimbursed for the expenses incurred for utilities will not, in turn, be able to benefit from the relief in question for the same expenses, since the latter, being subject to reimbursement, cannot be considered actually incurred.

In consideration of the fact that the facilitation measure expressly refers to a certain type of expense, it is necessary that the employer, in compliance with the rules on the protection of personal data, acquires and keeps, for any controls, the relative documentation for justify the amount spent and its inclusion in the limit of 3,000 euros.

Alternatively, the employer can acquire a declaration in lieu of an affidavit, pursuant to the decree of the President of the Republic December 28, 2000, n. 445, with which the requesting worker certifies that he is in possession of the documentation proving the payment of domestic utilities, of which he reports the elements necessary to identify them, such as for example the number and the holder of the invoice (and if different from the worker, the relationship with the latter), the type of user, the amount paid, the date and method of payment.

Furthermore, in order to avoid that the benefit is used several times in relation to the same expenses, it is necessary that the employer also acquires a substitutive declaration of an affidavit certifying the fact that the same invoices have not already been requested reimbursement, in whole or in part, not only from the same employer, but also from others.

All the documentation indicated in the aforesaid self-declaration must be kept by the employee in case of control by the tax authorities.

The expense justification can also be represented by several invoices and is valid even if the same is made out to a person other than the employee, provided it is made out to the spouse or family members indicated in the article 12 of the TUIR or, under certain conditions (i.e. in the case of analytical chargebacks), to the lessor. The sums disbursed by the employer, in the year 2023 or by 12 January 2024, may also refer to invoices that will be issued in the year 2024 as long as they concern consumption made in the year 2023.

Exceeding the maximum limit and related taxation

In the event that, upon settlement, the value of the goods or services provided, as well as the sums paid or reimbursed to them by the employers for the payment of domestic utilities of the integrated water service, electricity and natural gas, are higher than the limit of 3000 euros, the employer must subject the entire amount paid to taxation, i.e. also the portion of value lower than same limit of EUR 3,000.

Further operational indications

In consideration of the fact that the provision refers exclusively to the tax year 2023, sums and values paid by 12 January of the tax year following the one to which they relate shall also be deemed to have been received in the tax year (so-called extended cash principle).

This principle applies both with reference to disbursements in cash and with reference to disbursements in kind, through the assignment of goods or services.

Relationship with fuel bonus

The aforementioned regime, limited to the 2023 tax year and only to employees with dependent children, can be combined with the fuel bonus.

It follows that, in order to benefit from the tax exemption, the goods and services supplied in the 2023 tax period by the employer to each employee can reach a value of 200 euros for one or more petrol vouchers and a value of 3,000 euros (or 258.23 in the event of no dependent children) for all other goods and services (including any additional petrol vouchers) as well as for the sums paid or reimbursed for the payment of domestic water service charges integrated, electricity and natural gas.

If the value of the fuel bonus exceeds 200 euros, it contributes entirely to forming the income and is subject to ordinary taxation.

Even in the context of performance bonuses, if the value of the assets sold (including those relating to the fuel bonus), the services provided and the sums paid or reimbursed for the payment of domestic utilities for the integrated water service, electricity and natural gas, both

for an amount higher than the respective, and distinct, limits set by the two regulations in question (258.23 euros for persons without dependent children or 3,000 euros for the temporary regime under article 51, paragraph 3, of the TUIR and/or 200 euros for the fuel bonus), each value, in full, will be subject to ordinary taxation.

The Firm remains available for any further clarification or need.

Milan, 13 July 2023



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Attachment 1 - Summary of essential elements

	Fringe benefits	Fuel vouchers
Employers	Employers	Private employers
Beneficiary workers (subjective area)	Employees and income assimilated to employment (co.co.co., directors, etc.)	Employees only. Excluded are co.co.s, administrators, trainees and occasional self-employed persons
Type of payment (subjective area)	Voluntariness of disbursement by the employer, discretion of the amount (without prejudice to the limit of 3,000 euros for workers with dependent children and 258.23 euros for the remaining subjects), discretion of the subjects and/or categories.	Voluntariness of disbursement by the employer, discretion of the amount (without prejudice to the limit of 200 euros), discretion of the subjects and/or categories.
Type of benefit	<ul style="list-style-type: none"> - Goods and services (fringe benefits); - payment of household utilities. <p>Domestic utilities are understood to be those relating to residential properties owned or held by the employee, spouse or family members, whether or not they have established their residence or domicile there, provided that they actually bear the related expenses.</p> <p>Therefore, utilities for domestic use in the name of the condominium are also included (for example water or heating) and those for which, although the utilities are in the name of the owner of the property (landlord), the lease contract expressly provides for a form of analytical and non-flat rate debit to be paid by the worker (lessee) or by his spouse and family members, always on condition that these subjects actually bear the relative expense.</p>	Fuel voucher(s).
Value	The maximum value of the goods sold, of the services provided as	The value of the vouchers is up to 200 euros. They can be

	<p>well as of the sums paid or reimbursed for the payment of domestic utilities is increased to 3,000 euros only for employees with dependent children. The amount can be combined with petrol vouchers of Euro 200 provided that they are identified with a specific entry in the Single Labor Register.</p>	<p>combined with the fringe benefit of Euro 3,000 intended for workers with dependent children and Euro 258.23 for other subjects, provided that they are identified with a specific entry in the Single Labor Register.</p>
Company cost	<p>The amount is exempt from tax and social security contributions up to a maximum limit of Euro 3,000 only for employees with dependent children and up to a limit of Euro 258.23 for the remaining workers. And, consequently, it is net for the worker and constitutes labor costs pursuant to art. 95 TUIR.</p>	<p>The amount is exempt from taxation up to the maximum amount of Euro 200 but is taxable for tax purposes. For the disbursement of a voucher of 200 Euros, the Worker receives 180 Euros. The company cost is around 230 Euros.</p>
Exceeding the maximum tax limit	<p>In the event that the total value of the goods or services provided, as well as the sums paid or reimbursed by the employers for the payment of the domestic utilities of the integrated water service, electricity and natural gas, are higher than the euro limit 3,000 or 258.23 euros, the employer must subject the entire amount paid to taxation, i.e. also the portion of value lower than the same limit.</p>	<p>If the value of the fuel vouchers issued is greater than Euro 200, the same contributes entirely to forming the income and is subject to ordinary taxation.</p>
Benefit duration	<p>The sums and values paid by 12 January 2024 are also considered received in the tax period.</p> <p>This principle applies both with reference to cash payments of utilities, and with reference to disbursements in kind, through the assignment of goods or services</p>	<p>The disbursement must take place by 12 January 2024. The vouchers can also be used at a later time.</p>

**SUBSTITUTE DECLARATION OF THE NOTIITY DEED (Art.47 DPR 28
December 2000, n.445)**

I, _____ the _____ undersigned

born in _____ (_____) on _____
residing in _____
(_____) in via _____ n. _____

as a worker / employee / collaborator, at _____,
tax code and VAT number _____,

aware of the penal sanctions pursuant to article 76 of Presidential Decree 28.12.2000 n.445, in the event of false declarations and the formation or use of false documents

I DECLARE

- ✓ to have the conditions pertaining to the benefit pursuant to art. 40 of Legislative Decree 48/2023 in relation to the presence of dependent children¹pursuant to art. 12 paragraph 2 of the TUIR² as below:

FIRST NAME	SURNAME	TAX ID CODE

- ✓ with reference to the property for residential use located in _____, street/square/locality _____, owned/held by myself/my spouse/another family member as _____;

- ✓ to be in possession of the documentation proving the payment of the following domestic utilities, falling within the limit referred to in article 51, paragraph 3, of the TUIR:

¹ Including recognized children born out of wedlock, adopted or fostered children

² In particular, these are children who:

- are not older than 24 and received a total income equal to or less than 4,000 euros during the year;
- are over the age of 24 and have received a total annual income not exceeding 2,840.51 euros.

Invoice number	Invoice date	Issuer and type of user	Headed ³ to	Amount	Payment date	Terms of payment

- ✓ that the same invoices have not already been the subject of a request for reimbursement, in whole or in part, not only from the employer indicated above, but also from others.

(place, date)

The declarant

³As indicated in Circular no. 35/E of 04 November 2022, the holder of utilities for domestic use can be a person other than the employee, i.e.:

- the spouse or a family member indicated in article 12, Tuir: in the case of a family member, it is necessary to indicate the relationship with the worker,
- The **landlord**, in the event that the invoices concern properties leased to the worker, his spouse or family members of the latter, and only in the event that the lessor has provided for the analytical chargeback to the lessee, of the expenses relating to utilities: in this case it is necessary report the analytical list of the expenses charged.
- the condominium, for the portion left to be paid by the individual condominium.