Italy: Draft Budget Law 2018 - Higher taxation of capital gains on 'qualifying' shares for non-resident investing entities

Tax Alert

22 November 2017

Offices

Milan
Via Vittor Pisani 27, 20124
T: +39 02 676441 - F: +39 02 67644758

Ancona
Via I° Maggio 150/a, 60131
T: +39 071 2916378 - F: +39 071 2916221

Bologna
Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711 - F: +39 051 4392799

Florence
Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961 - F: +39 055 2619666

Genoa
P.zza della Vittoria 15/12, 16121
T: +39 010 5702225 - F: +39 010 584670

Naples
Via F. Caracciolo 17, 80122
T: +39 081 662617 - F: +39 081 2488373

Padua
Piazza Salvemini 2, 35131
T: +39 049 8239611 - F: +39 049 8239666

Perugia
Via Campo di Marte 19, 06124
T: +39 075 5734518 - F: +39 075 5723783

Pescara
P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479 - F: +39 085 4429900

Rome
Via Adelaide Ristori 38, 00197
T: +39 06 809631 - F: +39 06 8077459

Turin
C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166 - F: +39 011 8395865

Verona
Via Leone Pancaldo 68, 37138
T: +39 045 8114111 - F: +39 045 8114390

1.The proposal

The draft Budget Law 2018 (to be approved by the end of this year) proposes an increase of taxes applicable to gains realized on the disposal of ‘qualifying shares’ of Italian companies.

If approved, the provision will be effective as of 1 January 2019 and will hit non-resident entities in particular.

2. Definition of ‘qualifying shares’

Shares are defined as 'qualifying shares', when representing more than 20% of the voting rights or 25% of the share capital of a non-listed Italian company or, in the case of a public company, when incorporating more than 2% of the voting rights or representing more than 5% of the share capital.

3. Current Tax treatment upon non resident entities

The Italian domestic Law provides that capital gains arising from qualifying shares owned by foreign entities are taxed as follows (except for shares owned through an Italian permanent establishment):

— Gains realized within 2017 are taxable limitedly to 49.72%, at a 24% rate (CIT rate) - effective tax rate (ETR) is therefore 11.93%;

— Gains realized from 1 January 2018 are taxable limitedly to 58.14%, at the above rate of 24% (CIT rate) - ETR should consequently raise to 13.95%.

4. Proposed Tax treatment

The draft Budget Law 2018 proposes to replace the taxation described above with a flat 26% substitutive taxation, aligned with the capital gains tax of 'non qualified shares' and gains realized by physical persons.

5. Tax differential

The change should be particularly relevant for non resident entities that a) are non-Treaty protected (Treaties with Italy generally attribute taxation right of these gains to the State of residence), or b) are resident in a Treaty Country but might run the risk that the Italian Authorities deny treaty protection for the lack of business substance, or c) are resident in a State whose Treaty with Italy explicitly allows the latter to tax these gains (e.g. France - according to art. 8 of the Protocol, with respect to 'substantial', i.e. greater than 25%, participations).

Should the proposal pass as it is, the tax differential would in fact be significant, from 14% to 26% ETR.

6. Proposed step up

The same draft Budget Law 2018 includes a provision, however, that allows a 'step-up of the tax value of the shares' in non-listed resident entities.

The required conditions are: a) shares should be owned as of 1 January 2018, b) a value appraisal should be finalized by an expert within June 2018 and c) an 8% substitute tax should be paid within the same date (payment might be deferred with interest) on the so appraised value. The step up should be beneficial when 8% of current market value is lower than 26% of a potential gain from disposal of said qualifying shares of non listed Italian Companies.

In conclusion, if approved, this draft Budget Law offers a window of opportunity, within June 2018, to step up the value of qualifying shares in non-listed Italian companies, in order to avoid future heavier capital gains.

Contacts

KPMG, Tax & Legal

Domenico Busetto
Partner,
International Tax
T: +39 045 8114 323
E: dbusetto@kpmg.it

Giorgio Dal Corso
Manager,
International Tax
T: +39 045 8114 111
E: gdalcorso@kpmg.it

kpmg.com/it

kpmg.com/socialmedia

kpmg.com/app

Tax Alert / KPMG in Italy / 22 November 2017