Highlights of the 2017 fiscal package

Tax Focus

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Italy's fiscal package for 2017: initial comments on Law Decree no. 193/2016 (currently being converted into law) and on the Budget Bill (still to be approved and subject to change)

The 2017 fiscal package is contained in two separate measures: Law Decree no. 193/2016 (which came into force on 24 October 2016, the date it was published in the Italian Official Gazette, and which has to be converted into law within 60 days) and the Budget Bill for 2017 (currently under review by the Budget Committee of the Chamber of Deputies).

The following pages give an overview of the most important tax measures introduced by this new legislation, mainly in the area of direct tax.

Please note that these measures still have to examined by the two chambers: Law Decree no. 193/2016 still has to be converted into law, while the Budget Bill for 2017 still has to be approved by the Chamber of Deputies and the Senate.

Law Decree no. 193/2016

1. Supplementary tax returns that are advantageous to the taxpayer (article 5 of Law Decree no. 193/2016)

One of the main changes introduced by Law Decree no.193/2016 is to the rules on supplementary tax returns that are advantageous to taxpayers.

This change overrides the restrictive approach recently taken by the Supreme Court[(1)].

[(1)] According to Supreme Court judgment no. 13378 of 30 June 2016, it is possible for taxpayers to:

- submit a supplementary tax return, benefitting them in some way, by the deadline for the following year's tax return;
- submit a refund claim for any overpayments of tax within 48 months of the date of payment (a procedure regulated by article 38 of Presidential Decree no. 602/1973);
- in any case, and at any time, declare and remedy any possible errors in tax returns during litigation with the tax authorities.

In particular, article 5 of Law Decree no. 193/2016, in amending article 2(8) of Presidential Decree no. 322/1998, establishes the principle that it is possible to correct mistakes or omissions in income tax (IRES), regional business tax (IRAP) and substitute tax returns, including mistakes and omissions that have led to the reporting of higher income or, at any rate, a higher tax debt or lower tax credit. To do so, a supplementary return must be submitted by the deadline set in article 43 of Presidential Decree no. 600/1973, i.e. by 31 December of the fifth year following that in which the original return is submitted[2].

In practical terms, this means that, starting from this year, taxpayers can submit supplementary returns for tax years prior to 2015, e.g. from 2011 if the supplementary return is submitted in 2016. The previous rule, which required such returns to be submitted by the deadline for the following year's tax return, is scrapped.

1.1 Offsetting

Article 5 of Law Decree no. 193/2016, in amending article 2(8-*bis*) of Presidential Decree no. 322/1998, includes specific provisions on offsetting.

It stipulates that a tax credit resulting from a lower debt or higher credit declared in a supplementary tax return can be used to offset other tax bills pursuant to article 17 of Legislative Decree no. 241/1997 (so-called 'horizontal offsetting').

However, if a supplementary tax return is submitted after the deadline for the following year's tax return, the resulting tax credit can only be used to offset payments of debts accruing from the tax year following that in which the supplementary tax return is submitted[3]. In this case, the taxpayer must indicate, in the return for the tax year in which the supplementary return is submitted, (i) the tax credit resulting from the lower debt or higher credit declared in the supplementary return, and (ii) any portion of this tax credit that has already been used to offset other tax bills.

Consider the example of a supplementary tax return for 2015, which results in a higher tax credit and is submitted in 2018. The higher tax credit can be used to offset tax debts accruing from 2019 and the taxpayer must include the two items indicated above in its return for 2018.

1.2 Time limit for tax assessments

The new rules specify that, in the case of any supplementary tax return, the time limit for tax assessments begins to run from the date of its submission, but solely in respect of the corrected items.

In this way, the legislator clarifies that the submission of a supplementary tax return does not reset the time limit for assessments of items that have not been corrected.

[2] The deadline of 31 December of the fifth year following that in which the return is submitted applies only to tax years 2016 onwards. For previous tax years, assessments are time-barred on 31 December of the fourth year following that in which the return was submitted.

[3] Supplementary returns correcting errors in accrual accounting are not subject to the limits on the offsetting of tax credits resulting from supplementary returns submitted after the next tax year.

1.3 Sanctions and voluntary corrections of tax returns

Article 2(8) of Law Decree no. 193/2016 stipulates that the submission of a supplementary return will generally affect neither penalties nor the *ravvedimento operoso* procedure that can be used (under article 13 of Legislative Decree no. 472/1997) to voluntarily amend tax returns.

However, if an advantageous supplementary tax return is submitted, no penalties will be imposed on the taxpayer.

1.4 Amending tax returns during litigation

Article 2(8-*bis*) of Law Decree no. 193/2016 expressly upholds the principle, already established by the Supreme Court, that even during tax assessments or tax litigation taxpayers may declare and make good any mistakes that have affected their tax obligations and resulted in higher taxable income, higher tax debts, or lower tax credits.

1.5 Supplementary VAT returns

The rules described above also apply to supplementary VAT returns.

By adding paragraphs 6-*bis*, 6-*ter,* 6-*quater* and 6-*quinquies* to article 8 of Presidential Decree no. 322/1998, Law Decree no. 193/2016 also allows taxpayers to:

— submit supplementary VAT returns by the tax assessment deadline indicated in article 57 of Presidential Decree no. 633/1972 (paragraph 6-*bis*);

— deduct any VAT credit resulting from a supplementary VAT return submitted by the deadline for the following year's VAT return (the VAT credit can be deducted from VAT settled periodically or from the final VAT liability declared in the annual VAT return); alternatively, the VAT credit can be used for horizontal offsetting in accordance with article 17 of Legislative Decree no. 241/1997, or claimed as a refund if the conditions referred to in article 30 of Presidential Decree no. 633/1972 obtain[4] (paragraphs 6-*ter* and 6-*quater*);

— even during tax assessments or tax litigation, declare and make good any mistakes that have affected their tax obligations and resulted in higher taxable income, higher tax debts, or lower tax credits (paragraph 6-*quinquies*).

2. Payment notice amnesty (article 6 of Law Decree no. 193/2016 and article 6-*ter* of the Conversion Bill)

2.1 Introduction

For those taxpayers that opt for this amnesty, the legislator has scrapped the lists of debts handed over to Equitalia (the debt collection agency) and cancelled past payment injunctions issued by those city/town councils and other local authorities that do not use Equitalia to collect debts (and that decide to participate in this scheme). The 17-year amnesty runs from 1 January 2000 to 31 December 2016[5].

[4] If the supplementary VAT return is submitted after the deadline for the following year's return, the resulting VAT credit can only be used to offset payments of debts accruing from the tax year following that in which the supplementary VAT return is submitted.

[5] The relevant date is that on which the debt collection list was handed over to Equitalia and not the date on which the payment notice was served on the taxpayer.

This means that taxpayers still have to settle their debts, but are 'let off' some of the additional charges.

The amnesty applies not only to direct and indirect taxes, but also to INPS and INAIL[6] contributions, payments to special pension/welfare funds for professionals, local taxes (IMU and TARSU), state fees and, in general, all debts passed to Equitalia for collection or enforced through a payment injunction.

2.2 Payment injunctions

In the case of payment injunctions issued by city/town councils and other local authorities that do not use Equitalia, these bodies can decide whether or not to participate in the scheme. If they opt for it, they will have 60 days from the entry into force of the Conversion Bill to issue regulations on how to settle any outstanding payments. In this case, the debtors are only 'let off' the penalties: they still have to pay interest on arrears.

2.3 Debts to be collected by Equitalia

With regard to the lists handed over to Equitalia, debtors can settle their debts without any penalties or interest on arrears[7]. Therefore, they only have to pay the capital, interest other than that on arrears, collection fees[8], and the costs of any enforcement proceedings.

To benefit from the scrapping of the lists entrusted to Equitalia, taxpayers must submit a special application form by 31 March 2017. The form is available on Equitalia's web site.

By 31 May 2017, Equitalia must tell the taxpayers how much they have to pay and, if they have asked to pay in instalments, the size and due date of each tranche.

Taxpayers can ask to pay in up to five instalments, on which 4.5 percent interest p.a. will be charged. If a debt is settled in instalments, 70 percent of the debt must be paid in 2017 (in July, September and November) and the remainder in April and September 2018.

Once the amnesty application has been submitted, all pre-existing instalments scheduled for payment between 1 January 2017 and the date of the new first instalment or lump-sum payment will be suspended.

Successful completion of the process is conditional on full and prompt payment of the amounts due.

Once an application has been submitted, Equitalia cannot start any new precautionary or enforcement procedures.

2.4 Ineligible debts

The law expressly stipulates that the following debts are ineligible for the amnesty:

— VAT on imports;

— the EU's own traditional fiscal resources (e.g. customs duties);

— repayments of state aid;

— sums owed after pronouncements by the Court of Auditors;

— penalties (*sanzioni*) or fines (*multe*) issued by public authorities;

— fines (*multe* and *ammende*) and financial penalties (*sanzioni pecuniarie*) imposed as a result of criminal convictions.

With specific regard to financial penalties (*sanzioni pecuniarie*), these are ineligible for the amnesty if, despite being administrative penalties, they derive from convictions in the criminal courts (e.g. corporate liability as per Legislative Decree no. 231/2001).

Budget Law for 2017

1. 'Super' depreciation (extension) and 'hyper' depreciation (article 8)

1.1 'Super' depreciation extended

The Budget Law extends the 'super' depreciation regime introduced by article 1(91) of Law no. 208/2015 by one year.

'Super' depreciation can be used for IRES but not IRAP purposes and solely to calculate deductible depreciation charges and finance lease payments. It is available to those who have business income and those who practise trades or professions, if they invest in new tangible assets by 31 December 2017. For such investors, the depreciable base of the asset is raised by 40 percent.

This benefit will also apply to investments made by 30 June 2018, provided that - by the end of 2017 - the order has been accepted by the seller and at least 20 percent of the acquisition cost has been paid in advance.

For assets acquired under a finance lease agreement, the 40 percent markup will only apply to the portion of the lease payments that constitutes the principal (plus the price of any purchase option that is exercised).

Unlike the previous version of 'super' depreciation, this new one excludes vehicles and the other forms of transport indicated in article 164(b) and (b-*bis*) of the Italian Income Tax Code ('vehicles for public use'). However, motor vehicles used solely as capital goods in a business are still included.

The benefit only affects depreciation and has no impact on the calculation of any capital gains or losses made when an asset is sold, or on the calculation of the ceiling for the deduction of maintenance and repair costs.

The benefit does not apply to investments in:

— buildings and construction work;

— tangible assets whose tax depreciation rate (set in a Ministerial Decree of 1988) is less than 6.5 percent;

— the assets listed in Appendix 3 of the 2016 Budget Law (e.g. rolling stock and railway and tramway equipment).

[6] INPS is the Italian Social Security Institute; INAIL is the Italian Industrial Injury Compensation Board.

[7] Interest on arrears as defined in article 30 of Presidential Decree no. 602/73.

[8] Collection fees as defined in article 17 of Legislative Decree no. 112/99.

1.2 'Hyper' depreciation; new 'super' depreciation for intangible assets

'Hyper' depreciation has been introduced to encourage businesses to embrace technological change. It is available for certain assets connected up to a company's production management system or supply network. Their acquisition cost is increased by the following percentages:

a) 150 percent for investments in the new capital goods indicated in Appendix A of the Budget Law[9];

b) 40 percent for investments in the intangible assets indicated in Appendix B of the Budget Law[10].

The 40 percent benefit can only be taken by those who invest in intangible assets at the same time that they invest in new capital goods and take the 150 percent benefit.

To claim the benefit, the company's legal representative must produce a self-declaration as per Presidential Decree no. 445 of 28 December 2000. For assets with a unit price of more than €500,000, a certified technical appraisal is required, attesting that the technology meets the required standards.

The rules on depreciation will not affect the calculation of advance tax payments due for the tax year in progress on 31 December 2017 or the following year. These payments should be calculated on the basis of the tax that would have been calculated for the previous year without the benefit.

2 Tax credit for research and development (article 1 [15] and [16])

The rules on tax credits for R&D (introduced by Law Decree no. 145/2013) have been amended, with effect from the tax year following that in progress on 31 December 2106, i.e. from 2017 for calendar-year taxpayers.

The changes, which combine to form a measure that is advantageous to the taxpayer, are described below.

— The tax credit will be 50 percent for all eligible expenses[11].

— The maximum tax credit for each taxpayer will rise from €5 million to €20 million.

— The benefit will be extended to the tax year in progress on 31 December 2020.

— The benefit will also be available to resident enterprises or Italian permanent establishments of non-resident enterprises that carry out R&D under contracts signed with enterprises resident or located in other EU or EEA Member States or countries with which an exchange of information as per the Ministerial Decree of 4 September 1996 is possible.

It will be possible (via an F24 form) to use the tax credit to offset amounts owed to other institutions as well as the Revenue Agency, from the tax year subsequent to that in which the R&D costs are incurred.

There is no change to the minimum overall R&D expenditure of €30,000 per tax year.

3. ACE (Article 1 [550])

There are important changes to the allowance for corporate equity (ACE), also known as the notional interest deduction (NID), which was introduced to encourage the recapitalization of companies and to reduce differences in the tax treatment of companies funded with debt and others funded with equity[12]. The changes, some of which will apply to the tax year in progress on 31 December 2016, are described below.

— There will be a considerable reduction in the notional yield, from the current 4.75 percent to 2.3 percent for the tax year in progress on 31 December 2017. From the following tax year, the notional yield will rise slightly to 2.7 percent.

— There will be a further tightening of the anti-avoidance measure, as paragraph 6-*bis* establishes that: '*for parties other than banks and insurance undertakings, an increase in equity shall not have any effect until it is equal to the amount by which securities other than shares have increased compared with the amount reported in the financial statements for the tax year in progress on 31 December 2010*'.

— The anti-avoidance measure applied in extraordinary transactions, and affecting the carryforward of prior losses and surplus non-deductible interest expenses, will be extended to the ACE surpluses indicated in article 1(4) of Law Decree no. 201/2011.

— The 'Super-ACE' regime - i.e. the 40 percent mark-up of the ACE base for companies whose shares are listed on regulated markets or in the multilateral systems of EU or EEA Member States - will be abrogated (it never came into force).

— In the case of individuals and partnerships, there are changes to the method of calculating the equity on which the notional yield is based. Instead of calculating the notional yield as a percentage of the entire equity, from the tax year after that in progress on 31 December 2015 the notional yield will be calculated as a percentage of just the increase in equity since 31 December 2010.

These new rules will affect the calculation of advance payments of income tax for 2017, if based on historical costs.

4. Revaluation of business assets (article 1[554])

The Budget Law introduces a series of measures that (i) extend the deadline for revaluating land and shares not held for business purposes, and (ii) allow revaluation of business assets and recognition of the higher carrying amounts.

[9] Tangible assets that help transform companies into 'Industry 4.0' digital businesses.

[10] Intangible assets (software, systems, system integration solutions, applications, and application platforms) connected with 'Industry 4.0' investments.

[11] The 25 percent tax credit, currently available for certain types of investment, has therefore been scrapped.

[12] ACE is calculated by multiplying a certain amount of equity (the portion by which equity - as defined in the relevant rules - has increased since 31 December 2010) by a notional rate of interest. The equity increases that qualify for ACE purposes include those resulting from (i) cash contributions, (ii) waivers of amounts owed by a company to its shareholders, and (iii) undistributed profits set aside to freely disposable reserves.

4.1 Revaluation of land and shares

It will still be possible, in 2017, to adjust the purchase cost of land and shares held on 1 January 2017 (but not as part of a business).

This optional regime can lead to a tax saving if the revaluated asset is sold, as the increase in the tax basis of the asset reduces any capital gains.

To benefit, it is necessary to pay an 8 percent substitute tax. This rate applies to the revaluation of both land and shares.

The substitute tax must be paid, in one lump sum, by 30 June 2017. The substitute tax may be offset against credits for other taxes through an F24 form.

4.2 Revaluation of business assets

The revaluation of business assets was introduced by the 2016 Budget Law. This scheme is now renewed. Like other revaluation measures in the past, it reiterates the main provisions of Law no. 342 of 21 November 2000.

4.2.1 Who can revaluate?

Those that can benefit from the new business asset revaluation regime include resident joint-stock companies and commercial bodies (as long as they are not IAS/IFRS adopters), resident cooperatives and mutual insurance companies, European companies and cooperatives, resident s.a.s. limited partnerships and s.n.c. general partnerships, non-commercial bodies and resident sole proprietors (solely in respect of assets belonging to the business). Permanent establishments of non-resident enterprises can also revaluate assets.

4.2.2 What can be revaluated?

Business assets and shares can both be revaluated and, more specifically:

— tangible and intangible assets, with the exclusion of any that are manufactured or exchanged by the company as part of its business activities;

— shares, constituting financial fixed assets, in subsidiaries or associates pursuant to article 2359 of the Italian Civil Code.

The above assets can be revaluated if they are recorded in the financial statements for the tax year in progress on 31 December 2015. The new carrying amount must be recognized in the following year's financial statements, to be approved after 1 January 2017 (therefore, the financial statements for 2016, in the case of calendar-year taxpayers).

All assets in the same category must be revaluated (the categories being those defined in article 4 of Ministerial Decree no. 162/2001). An annotation must be made in the inventory and an explanation must be given in the notes to the financial statements.

4.2.3 How revaluation works

By paying a substitute tax of 10 percent in place of IRES/IRPEF, IRAP and any relevant surtaxes, a company that revaluates its assets may, wholly or partially, recognize the net revaluation reserve for tax purposes.

Likewise, the increase in the carrying amount of the assets (i.e. the difference between the old and the new value) is recognized for income tax and surtax purposes if the taxpayer pays a substitute tax of:

— 16 percent for depreciable assets;

— 12 percent for non-depreciable assets.

The substitute tax must be paid by the payment deadline for the balance of income taxes due for the tax year of the revaluation.

For tax purposes, the new carrying amounts are recognized '*from the third tax year following that of the revaluation*', i.e. from the tax year ending 31 December 2019, for calendar-year taxpayers.

4.2.4 Capital gains and losses

When it comes to the calculation of capital gains and losses, the new carrying amounts become effective from the fourth tax year after that of the revaluation (i.e. from the tax year ending 31 December 2020, for calendar-year taxpayers).

Only in the case of intangible assets are the new carrying amounts recognized for tax purposes '*from the tax year in progress on 1 December 2018*'.

If, before the start of the fourth tax year following that of their revaluation, revaluated assets are transferred for a consideration, or earmarked for purposes unrelated to a company's business activities, the calculation of capital gains or losses must be based on the cost of the assets before their revaluation. In such cases, the new carrying amount of the assets may not be used as the starting point for measuring any capital gains or losses.

4.2.5 Revaluation reserve

When recording higher carrying amounts, it is necessary to create an equity reserve, to be taxed when distributed (for IRES/IRPEF but not IRAP).

When the reserve is distributed to shareholders, the principle cited in article 13 (3) and (5) of Law no. 342/2000 applies.

— The amounts allocated to shareholders, plus the substitute tax on these amounts, form taxable income of:
  - the company or other body listed in 4.2.1 above;
  - the shareholders.

— The party that carried out the revaluation is given an IRES/IRPEF credit equal to the amount of substitute tax paid on the assets that have been transferred.

— To avoid duplicate taxes, the tax credit may be deducted from the taxes owed on this higher capital gain.

4.2.6 Alternative system for IFRS adopters

IFRS adopters too may revaluate assets, including equity in companies or bodies constituting financial fixed assets. For tax purposes, a tax-deferred revaluation reserve must be created, equal to the new carrying amounts of the assets, net of substitute tax. By paying upfront a substitute tax of 10 percent, in place of IRES, IRAP and related surtaxes, IFRS adopters can ensure that future distributions of the reserve will not be taxed.

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