Italy: recent changes to tax rules

Tax & Legal Alert
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This Tax & Legal Alert summarises some of the measures introduced by recent tax legislation: Law no. 213 of 30 December 2023 (the "2024 Budget Law"), published in the Official Gazette on 30 December 2023 and in force since 1 January 2024, and Decree Law no. 145/2023.

1. Direct taxation

1.1 Deferred deduction of remaining instalments of loan losses of banks, financial institutions and insurance companies - article 1 (49-51) of the 2024 Budget Law

The 2024 Budget Law defers the deduction by banks, financial institutions and insurance companies, for IRES and IRAP purposes, of one of the instalments deriving from loan losses.

Rules on the deductibility of write-downs and loan losses of banks, financial institutions and insurance companies were introduced in 2015 (the "Deductibility Rules")[1] .

The Deductibility Rules allowed banks, financial institutions and insurance companies to fully deduct loan losses transferred in exchange for a consideration; however, write-downs and other types of losses could only be deducted in equal instalments in the fiscal year in which they were booked and the next four years.

[1] By article 16 of Decree Law no. 83/2015.

The 2024 Budget Law has made the following changes to the Deductibility Rules (references to fiscal years are to those in progress on 31 December of the relevant year).

— One percent of the instalment due to be deducted for IRES and IRAP purposes in **FY2024 (for FY2024)** has been deferred and must now be deducted over two fiscal years: FY2027 and FY2028.

— Three percent of the instalment due to be deducted for IRES and IRAP purposes in **FY2026 (for FY2024)** has been deferred and must now be deducted over two fiscal years: again, FY2027 and FY2028.

— The 2024 Budget Law also explains how to calculate advance instalments of IRES and IRAP for the fiscal years in question.

— For FY2024, it is necessary to take, as the tax for the previous fiscal year, the amount that would have been calculated without applying the Deductibility Rules (in relation to just one percent of the instalment).

— For FY2026, it is necessary to take, as the tax for the previous fiscal year, the amount that would have been calculated without applying the Deductibility Rules (in relation to just three percent of the instalment).

— For FY2027 and FY2028, no account must be taken of the Deductibility Rules.

1.2 Revaluation of the acquisition cost of land and shares traded/not traded on regulated markets - article 1 (52-53) of the 2024 Budget Law

The rules governing revaluation of the acquisition cost of shares (traded/not traded on regulated markets or on multilateral trading facilities), developable land and agricultural land have again been renewed. They now cover shares and developable/agricultural land owned on 1 January 2024. The substitute tax remains at 16 percent.

As in past iterations, the rules allow taxpayers - when computing financial gains and losses, also for securities traded on regulated markets - to use the fair market value of the assets instead of their acquisition cost or price, provided that the assets are held on 1 January 2024 and that a 16 percent substitute tax is paid

1.3 Opening stock adjustments - article 1 (78-85) of the 2024 Budget Law

For businesses (corporations and other) that are not IFRS adopters, the 2024 Budget Law includes a stock-adjustment rule. Such businesses, solely for the fiscal year in progress on 31 December 2023, may adjust their opening stock by eliminating amounts that are higher than the actual ones, or by recognising opening stock previously omitted. Depending on whether it involves eliminated or newly recognised amounts, the adjustment gives rise to various taxes. In no cases are penalties triggered.

Elimination adjustment

This adjustment is subject to payment of two taxes: VAT and substitute tax.

(a) The VAT is calculated by applying the average VAT rate for 2023 to the amount obtained by multiplying the eliminated amount by the relevant coefficient. These coefficients will be established, for various different sectors, in a special decree to be issued by the director of the Italian Revenue Agency. The average VAT rate is given by the ratio of (a) the VAT on the entity’s transactions (including transactions not liable to VAT and transactions subject to special regimes), less the VAT on sales of depreciable goods, to (b) the declared volume of business.

(b) An 18 percent substitute tax in place of IRPEF, IRES and IRAP must be applied on the difference between the amount calculated as described in point a) and the eliminated amount.

Recognition adjustment

When amounts are recognised, an 18 percent substitute tax in place of IRPEF, IRES and IRAP must be applied on the recognised amount.

The adjustment must be entered in the income tax return for the fiscal year in progress on 30 September 2023.

Declaration

The adjustment must be declared in the income tax return for the fiscal year in progress on 30 September 2023.

Payment deadlines

The substitute taxes must be paid in two equal instalments: the first by the deadline for the payment of the balance of income taxes for the fiscal year in progress on 30 September 2023 and the second by the deadline for the payment of the second or sole advance instalment of income taxes for the following fiscal year.

Should payment not be made by these deadlines, the outstanding amounts – plus interest and penalties - will be listed for collection.

Tax assessments

Adjustments will not trigger any penalties.

The adjusted figures are recognised for legal and tax purposes from the fiscal year in progress on 30 September 2023 and, to the extent of the recognised or eliminated amount, cannot be targeted in assessments of fiscal years prior to that in progress on 30 September 2023.

Adjustments will not affect preliminary tax audit reports or notices of assessment already served by 1 January 2024.

Tax assessments, penalties, collection and litigation will be regulated by income tax rules.

The substitute tax is not deductible for the purposes of income taxes, related surtaxes, or IRAP.

1.4 Limit on the possibility of using tax credits to offset tax liabilities - article 1 (94) of the 2024 Budget Law

There is a significant change regarding tax payments made through tax credits. Commencing 1 July 2024, it will no longer be possible to offset liabilities for state taxes against credits for other taxes if the overall liability resulting from assessment notices or payment notices served by the Italian Revenue Agency exceeds EUR100,000. Such tax credits include those arising from tax incentives (‘eco-bonus’, ‘super bonus’, research and development, etc.).

The limit on offsetting can only be lifted "following the complete clearance of the alleged infringements".

Therefore, from 1 July, taxpayers must first settle outstanding liabilities before they can use tax credits to offset payments. Hence, we recommend that, before this new rule comes into force, companies contact the Italian Revenue Agency to verify their status.

If companies discover that their total liabilities exceed EUR100,000, they could adopt the following temporary solutions by 30 June 2024.

1) Payment, by that date, of some of the liabilities, to bring the total below the EUR100,000 threshold.

2) Application for a payment extension, to ensure that instalments paid by 30 June 2024 bring the total liability below the EUR100,000 threshold.

3) Offsetting of any available tax credits against liabilities, to avoid the ban on offsetting from 1 July 2024.

Official clarifications from the Italian Revenue Agency on the operational details of the new rule will be issued. Meanwhile our tax advisors are on hand to provide any clarification or assistance.

2. Indirect taxation

2.1 VAT rate for baby products and for feminine hygiene products - article 1 (45) of the 2024 Budget Law

A 10 percent VAT rate has been reintroduced for retailed baby products, such as powdered or liquid milk, flour-based food products and nappies.

The previous VAT rate was 5 percent.

The VAT rate for feminine hygiene products has also been raised from 5 percent to 10 percent.

The VAT rate for infant car seats has been raised from 5 percent to 22 percent.

2.2 Postponement to 1 July 2024 of the plastic tax and the sugar tax - article 1 (44) of the 2024 Budget Law

The date on which the plastic tax and the sugar tax will come into force has been postponed to 1 July 2024[2].

Plastic tax

The new plastic tax will be charged at EUR0.45 per kilo of synthetic organic polymers actually used in the manufacture and consumption of single-use products (MACSI) used for the packaging, protection, handling or delivery of goods or foodstuffs, or for their sealing, marketing or presentation.

It will be necessary to declare the amount of plastic contained in MACSI, the percentage of synthetic organic polymers and, if used, the percentage of recycled materials. It will also be necessary to indicate any exemptions or exclusions (for exports, EU sales, compostable products, medical uses, etc.) and, solely in the case of manufacturers, how the raw materials are stored (in the same place or separately).

All the practical details will be spelled out by the Italian Customs Agency, which has been tasked with implementing the new tax. It also remains to be seen whether businesses will be able to avoid duplicate and excessive costs, and to apply duty-suspension regimes – as is possible for other types of consumption taxes – or exemptions based on their degree of success in creating a circular economy that reduces the environmental impact of plastics.

Sugar tax

The sugar tax will be levied on the consumption of sugary drinks, i.e. ready-to-drink products and products to be used after dilution, classified under the CN tariff headings 2009 and 2202, intended for human consumption, and having an alcohol content of no more than 1.2 percent.

The tax will be EUR0.25 per kilogram in the case of products to be used after dilution and EUR10 per 100 litres in the case of ready-to-drink products.

Kick-off date

The date on which the plastic tax and the sugar tax will come into force has already been postponed several times and has now been set for 1 July 2024.

The time has therefore come for Italian businesses to analyse their sale and supply chains and prepare to comply with the new tax and reporting rules, which – unless there are any further postponements – will come into force in less than six months’ time.

[2] These taxes were originally introduced by the 2020 Budget Law (Law no. 150/2019).

2.3 Reduced VAT rate of 10 percent for food supplements - article 4-ter of Decree Law no. 145/2023

This rule, in force since 17 December 2023, sets the VAT rate for food supplements and establishes that such products are to be expressly included in the official list of goods and services subject to lower VAT[3].

In particular, the food supplements referred to in Legislative Decree no. 169/2004, "*being foodstuffs not named or included elsewhere, and classifiable under tariff heading 2106 of the Combined Nomenclature*", are subject to a reduced VAT rate of 10 percent, regardless of the form in which they are presented and marketed.

The purpose of this rule is to reduce the number of applications made to the Italian Revenue Agency for tax rulings. A technical opinion issued by the Italian Customs Agency, based on the physical, chemical and product characteristics of a food supplement, will be sufficient confirmation that it qualifies for the lower 10 percent VAT rate.

[3] Under point 80, Part III of List A, attached to Presidential Decree no. 633/1972 – the "VAT Decree".

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