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Italy - Budget Law for 2016



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On 22 December 2015 the Italian Parliament passed the Budget Law for 2016 (Law n. 208 of 28 December 2015 - published on 30 December in the Italian Official Gazette), this law introduces significant changes to corporate income tax.

An outline of the changes is given below.

Reduction in the corporate income tax (IRES) rate from 2017

The IRES rate will be reduced from 27.5 percent to 24 percent from 2017. For 2016 it remains unchanged.

Increase in the corporate income tax (IRES) rate for credit and financial institutions

From 2017 the standard IRES rate will rise by an additional 3.5 percent for credit and financial institutions (including the Bank of Italy).

Extension of the statute of limitations for VAT and income-tax assessments

The statute of limitations for assessments of corporate income tax (IRES), regional business tax (IRAP) and VAT has been extended from 4 to 5 years.

New penalty system for breaches of tax rules – 2016 start

A new system of administrative penalties for breaches of tax rules will be in force from 2016 and not – as originally established by Legislative Decree no. 158/2015 – from 2017 (see our Tax Alert of 22 October 2015).

Tax deduction of black-list costs and expenses and CFC rules

Tax deduction of costs and expenses (transactions with countries offering preferential tax regimes)

The anti-avoidance rule on the tax deduction of costs and expenses arising from transactions with entities resident or located in preferential tax jurisdictions has been repealed. Under the old rule, tax deduction was allowed up to the arm's length value of costs. For any portion exceeding the arm's length amount it was necessary to demonstrate that there were sound

business reasons behind the transaction and the transaction had actually taken place. Under the new rule, the tax deduction of costs arising from transactions with taxpayers established in a black-list country will be regulated by the ordinary principles laid down in the Italian income tax code.

CFC rules

For CFC purposes, preferential tax regimes (i.e. tax havens) were those appearing on a 'black list'. The CFC black list has now been abolished and the CFC rules will apply to controlled companies resident or established in states or territories – other than those in the EU or EEA that have an effective exchange of information with the Italian tax authorities – whose ordinary or special tax regimes set a nominal level of taxation that is less than half the level of taxation in Italy.

However, EU/EEA controlled companies may also fall within the scope of the CFC rules in certain circumstances.

Under the new rules, CFC income attributed to a resident shareholder must be subject to a level of taxation not less than the standard corporate income tax rate in Italy (currently 27.5 percent). The repealed rule set the level of taxation at not less than 27 percent.

Country-by-country reporting

The country-by-country reporting obligations recommended by the OECD have been introduced (see our Tax Alert of 23 December 2015).

Measures to combat international tax evasion

To combat international tax evasion, a decree to be issued by the Ministry of Economy and Finance will set the general guidelines that the Italian tax authorities must follow in order to collect information on purchases of goods and services from taxpayers resident or established outside Italy. The Italian Revenue Agency's director will issue implementation rules.

Amendments to the Patent Box regime

Under the Patent Box regime (see our Tax Alerts of 2 February 2015 and of 3 November 2015), a certain percentage of income attributable to the 'use' of qualifying intellectual property is excluded from the tax base.

The list of intellectual properties that can benefit from the Italian Patent Box facility has been amended: the category 'intellectual property' has been replaced by 'software protected by copyright'.

In addition, it has been clarified that if two or more qualifying intangibles belonging to the same taxpayer are complementary, so that the realization of a product or process depends on their joint use, these intangibles represent one individual asset for Patent Box purposes.

New permanent establishment definition for the gaming business

There is a new definition of permanent establishment for the gaming and betting industry.

Extra depreciation of certain tangible assets

For new tangible assets whose tax depreciation rate is higher than 6.5 percent, there is 40 percent extra depreciation (i.e. a 40 percent increase in cost), resulting in 140 percent tax depreciation.

To qualify for the measure, the assets have to be purchased or rented under a financial leasing contract between 15 October 2015 and 31 December 2016. Real estate and certain other assets (e.g. pipelines, rolling stock and airplanes) are excluded from the increase.

This new tax rule does not affect the calculation of the advance payments due for the tax years in progress on 31 December 2015 and 31 December 2016.

Amortization period reduced to 5 years for higher values of goodwill and trademarks resulting from business reorganizations

Higher carrying values of tangible and intangible assets, resulting from tax-neutral business reorganizations (e.g. mergers, demergers or contributions of a business as a going concern) are not relevant for corporate income tax (IRES) or regional business tax (IRAP) purposes.

However, article 15(10) of Law Decree no. 185/2008 allows the recipient (e.g. the company resulting from a merger) to step up the carrying values of trademarks, goodwill and other intangibles by paying a 16 percent substitute tax.

For goodwill and trademarks, the step-up regime allows tax amortization over 10 years (for both IRES and IRAP purposes). The 2016 Budget Law reduces the amortization period for higher carrying values of goodwill and trademarks from 10 to 5 years.

Effective date: the new rule applies to reorganizations implemented from calendar year 2016.

Step-up of business assets

Italian resident companies that adopt domestic GAAPs may step up business assets for accounting and tax (IRES and IRAP) purposes. The election may apply to tangible and intangible assets (except immovable property held by real estate trading companies) and to qualifying shareholdings, provided that the assets are included in the balance sheet of the year in progress on 31 December 2014. The step-up must be made in the financial statements for 2015.

Under the new regime, companies choose the category of assets to be stepped up. The step-up involves the payment of a 16 percent substitute tax for amortizable/depreciable assets and of a 12 percent substitute tax for non-amortizable/non-depreciable assets.

The new values are fiscally recognized for depreciation and amortization purposes from the third fiscal year following that in which the step-up is made. Tax recognition for capital gains purposes starts from the fourth year following that in which the step-up is made. The equity reserve created as a consequence of the step-up can be freely distributed, provided that a 10 percent substitute tax is paid.

Other provisions (with effect from 1 January 2016)

Municipal taxes on 'imbullonati'

The registered value of immovable property (for the application of municipal taxes) previously took into account not only the buildings themselves but also the plant connected to or incorporated into buildings or in some way permanently fixed to them (e.g. machinery bolted to the ground – known as 'imbullonati' in Italian). Practically speaking, such items were treated as immovable property and taxed accordingly. Now, the municipal taxes on 'imbullonati' have been repealed. Taxpayers will have to follow a special procedure and update their registered values in order to benefit from this new tax regime.

Repeal of additional tax on boats

The additional tax on boats has been repealed. However, the additional tax on aircraft and on air-taxi flights remains in force.

Amendments to the municipal tax on immovable assets (IMU)

There will be certain exemptions from IMU on rural immovable assets (e.g. those located in the mountains and hills and those held by farmers qualifying as 'professional agricultural entrepreneurs').

Increased limits for cash payments

The ceiling on the use of cash transactions has been increased to €3,000 from €1,000.

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