

LEGAL INFORMATION NEWSLETTER

No. 2

February, 2017

We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

2017 NATIONAL BUDGET ACT – NEW MEASURES REGARDING CORPORATE TAXATION PUBLISHED ON THE OFFICIAL GAZETTE

Introduction - On 21 December 2016, Act No. 232 of 11 December 2016 (the Budget Act for 2017) was published in the Official Gazette No. 297, Ordinary Supplement No. 57.

The main tax measures include the following:

- the introduction of a new tax on entrepreneurial income;
- the enhancement and extension of certain incentives, e.g. incentives for start-up companies, tax credits for R&D activities and increased depreciation for qualifying assets;
- amendments to the current regime providing for an allowance for corporate equity (the so called “ACE” regime);
- the introduction of a new regime for high-net-worth individuals transferring their tax residence to Italy;
- the extension of certain tax credits for expenses incurred for the improvement and refurbishment of immovable property;
- the introduction of a VAT group regime; and
- the standard and reduced VAT rates will not be increased in 2017.

The Budget Act for 2017 entered into force on 1 January 2017.

Herein below are summarized the details on the main measures regarding corporate taxation.

Corporate income tax rate and dividend withholding tax rate - With effect from 2017, it was confirmed that the corporate income tax rate is decreased to 24%.

Nevertheless, qualifying banks and financial institutions, save for qualifying investment fund management companies, are subject to a surtax of 3.5%.

In addition, the reduced withholding tax levied on dividends paid out to a company resident and subject to corporate income tax in another EEA country that allows an adequate exchange of information with Italy is decreased to 1.2%.

Interest deduction – The Budget Act provides that with effect from 2017, interest paid by qualifying banks and financial institutions are fully deductible. However, interest paid by insurance companies, parent companies of insurance groups and qualifying investment fund management companies are only deductible up to 96% of the total amount.

Deduction of costs - The cap to the deductibility of costs for certain leased or rented vehicles used by sales agents and representatives is increased to EUR 5,164.57.

Allowance for corporate equity – The applicable allowance for corporate equity (ACE) rate is 2.3% in 2017 and will be increased to 2.7% in 2018.

In addition, the more favorable ACE regime for companies that decide to list their shares on a regulated EEA market, introduced by the Decree No. 91 of 24 June 2014, is repealed.

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For taxpayers other than banks and insurance companies, the qualifying net equity increase is netted of the increase of securities and financial instruments, other than participations, compared to the amount held on 31 December 2010.

The excess of notional yield can no longer be carried forward to the following years where the company undergoes both a change of control and a change in its actual business purpose in the fiscal year in which the change of control occurs or in the 2 preceding or following fiscal years, unless certain conditions are met.

Similarly, in the case of mergers and split up, the carry-forward of the excess of notional yield is now limited to an amount not exceeding the net asset value resulting from either the last financial statements or the financial statements that must be prepared in the context of the merger or division, whichever is lower, without taking into account the equity contributions made in the previous 24 months and subject to the condition that the profit and loss account shows an amount of revenue and labor costs exceeding 40% of the average of these items for the 2 previous fiscal years.

Eventually, it should be noted that taxpayers opting for the application of the new tax on entrepreneurial income, e.g. individual entrepreneurs, may also benefit from the ACE regime.

Losses - A company may transfer tax losses incurred in the first 3 years of operation of the business to a related company which, at the end of the fiscal year in which the transfer is made, directly or indirectly holds an equity interest in the transferor granting voting rights and a profit share not lower than 20%.

However, the following conditions must be met:

- the shares of the transferor, or of the transferee, must be negotiated on a regulated stock exchange or a multilateral trading facility of an EEA country that has concluded an agreement with Italy allowing an effective exchange of information;
- the transferor must not be mainly engaged in the real estate business;
- the transferee and the transferor must have the same fiscal year; and

- the transferor did not opt for the application of the tax consolidation or transparency regime in the relevant fiscal years.

The transfer must be finalized before the deadline for the submission of the annual tax return and the losses incurred in the first 3 years of operation of the business must be transferred in full.

The transferor must also receive a remuneration calculated on the basis of the corporate income tax rate applicable in the fiscal years in which the tax losses accrued. Such remuneration is not included in the taxable income of the transferor. Accelerated depreciation

The temporary accelerated depreciation regime, introduced by Act No. 208 of 28 December 2015 (2016 National Budget Act, has been extended to qualifying tangible assets, except certain vehicles not exclusively used for the business of the company, purchased or acquired through a financial lease before 30 June 2018.

However, for assets purchased starting from 1 January 2018, the relevant purchase orders must be accepted by the seller, and at least 20% of the purchase price must be actually paid, by 31 December 2017.

In addition, the acquisition cost of certain tangible assets, specifically listed in annex A to the Act and purchased between 1 January 2017 and 30 June 2018 in relation to digital and technological transformation processes promoted by the Italian government within its Industry Plan 4.0, is increased by 150% for depreciation purposes.

For assets purchased starting from 1 January 2018, the relevant purchase orders must be accepted by the seller, and at least 20% of the purchase price must be actually paid, by 31 December 2017.

For taxpayers benefitting from this favorable regime, the acquisition cost of certain intangible assets, specifically listed in annex B, is also increased by 40% for depreciation purposes.

In order to benefit from the accelerated depreciation regime, the legal representative must provide a self-declaration, or an expert's sworn appraisal for assets with an acquisition cost higher than EUR 500,000, certifying that

the purchased asset meets the required technical characteristics and it is connected to the relevant production management systems or supply networks.

Incentive for investments in start-up companies - The deduction for investments made in start-up companies that qualify as innovative under Law Decree No. 179 of 18 October 2012 has been amended and permanently confirmed.

Companies investing in an innovative start-up company may deduct from their taxable income 30% of the amount invested.

The maximum deduction is set at EUR 1.8 million each year and the incentive is granted on the condition that the investor maintains the equity participation in the innovative start-up company for at least 3 consecutive fiscal years.

The deduction also applies in relation to investments in qualifying innovative small and medium-sized enterprises (SMEs).

Investment credit - The tax credit for the tourism sector, introduced by Law Decree No. 83 of 31 May 2014, has been amended and extended for fiscal years 2017 and 2018. In particular, hotels and other accommodation facilities may benefit from a tax credit equal to 65% of documented expenses incurred for renovation and improvement of energy efficiency and seismic performance, subject to certain conditions.

Furthermore, the tax credit regime for research and development (R&D) activities, introduced by Law Decree No. 145 of 23 December 2013 and subsequently amended by Law No. 190 of 23 December 2014 (2015 National Budget Act), has been amended and extended.

Specifically, from fiscal year 2017 to fiscal year 2020, qualifying enterprises may benefit from a tax credit equal to 50% of R&D expenses exceeding the average R&D expenditures that the enterprise has incurred in fiscal years 2012, 2013 and 2014, up to EUR 20 million.

The credit is also available to resident companies and Italian permanent establishments of non-resident companies which carry out R&D activities under contracts concluded with resident entities and entities resident in a EEA

country or in a country which allow an adequate exchange of information with Italy.

On 25 January 2017, the Italian Revenue Service issued its resolution No. 12/E providing specific clarifications on the tax credit regime.

Revaluation of business assets - Qualifying persons may elect to step up the value of both tangible and intangible business assets, except immovable properties held by certain real estate companies, included in the balance sheet of the accounting period ongoing on 31 December 2015, by paying a substitute tax at the rates of:

- 16% for depreciable/amortizable assets; and

- 12% for non-depreciable/amortizable assets.

As a consequence, the company creates an equity reserve which can be freely distributed following the payment of a 10% substitute tax.

The increased value of the asset is recognized as of the 3rd fiscal year following the exercise of the option, for income tax purposes, and as of the 4th fiscal year, for capital gain purposes.

Transfers to shareholders - Qualifying companies and partnerships assigning or selling to their shareholders, before 30 September 2017, certain immovable properties or registered movable properties may opt for the application of an 8% substitute tax on the difference between the market value of the property and its tax basis. A 10.5% substitute tax applies for dormant companies. Related deferred tax reserves are subject to a 13% substitute tax.