Grant Thornton

Budget Law 2023
Summary of international tax provisions

Focus on

In this article, **we summarize the main provisions with regard to international tax introduced by Budget Law 2023 (Law 197/2022).**

Non-deductibility of costs deriving from transactions occurred with companies located in tax havens (art. 1, para. 84-86)

The deductibility limit within the "normal value" (pursuant to Article 9 of TUIR) is reintroduced for costs deriving from transactions with companies or professionals respectively residing or domiciled in "non-cooperative" countries or territories for tax purposes. However, the aforementioned limit does not apply in case of evidence of the effective economic interest and the concrete execution of the operations carried out by companies resident in Italy.

"Non-cooperative countries or territories" are those identified in Annex I to the EU list of non-cooperative jurisdictions for tax purposes, adopted with conclusions of the Council of the European Union. This list, updated on October 4, 2022, currently includes American Samoa, Anguilla, the Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the Turks and Caicos Islands, the United States Virgin Islands and Vanuatu.

The obligation to separately indicate costs in the tax return is also reintroduced, regardless of whether they are lower or higher than the normal value. In case of omitted or incomplete indication of expenses and other charges pursuant to art. 110, co. 9-ter of T.U.I.R., a fine equal to 10% of the total amount of expenses and other charges not indicated in the tax return is applied, ranging from a minimum of €500 to a maximum of €50,000.

Substitute tax on reserves of profits generated abroad (art. 1, para. 87-95)

The Law introduces a substitute tax on profits and reserves that are undistributed at the date of entry into force of Budget Law 2023, as resulting from the financial statements at 31 December 2021 of subsidiary companies residing in blacklist jurisdictions. Generally, in this case, the distribution contributes entirely to the calculation of the income for taxpayers residing in Italy. The regime under analysis, which is optional, is aimed at anticipating the taxation of these profits so that, once distributed, they are no longer subject to taxation in Italy. The option provides for the payment of a substitute tax equal to i) 9% in the case of IRES or ii) 30% in the case of IRPEF, to be determined in proportion to the foreign investment held, taking account of the scaling effect in case of indirect shareholdings through subsidiaries pursuant to art. 167, para. 2 of TUIR.

Upon the presence of certain conditions (i.e., the repatriation of profits within the deadline for the settlement payment of taxes due for 2023 and the allocation of such profits in a specific equity reserve for a period of no less than 2 FYs), the aforementioned rates are reduced by 3 percentage points. Offsetting through F24 form is not allowed pursuant to art. 17 of Legislative Decree no. 241/97.

The option under analysis can be exercised separately for each foreign subsidiary and with regard to all or part of the related profits and profit reserves, through a specific indication in the tax return to be filed in 2023 for 2022 income. The same option can also be exercised in relation to profits attributable to permanent establishments that apply the so-called branch exemption regime (art. 168-ter TUIR).

In the event of the sale of the investment, the fiscally recognized cost is increased, up to the consideration for the sale, by the amount of the profits and profit reserves subject to the aforementioned substitute tax and decreased by the amount of the same distributed profits and profit reserves.

Taxation of capital gains realized by foreign subjects in real estate companies (art. 1, para. 96-99)

Starting from 1 January 2023, capital gains realized by foreign subjects and deriving from the sale of equity investments in foreign real estate companies and entities not traded on regulated markets, the value of which is represented (directly or indirectly) for more than 50% by properties located in Italy, are subject to taxation in Italy.

Property whose production or exchange is the core of the business activity ("commodity real estate"), as well as property used directly in the exercise of the business ("capital real estate") is excluded for the purposes of the above calculation.

Capital gains realized by UCIs established in the Member States of the European Union and in the States party to the Agreement on the European Economic Area that allow for an adequate exchange of information are excluded from the scope of application of the new regulation.

As specified in the explanatory report to Budget Law 2023, this provision complies with art. 13, para. 4 of OECD Model Tax Convention, which has already been implemented in several Conventions entered into by Italy aimed at avoiding double taxation on income and assets.

Investment Management Exemption (art. 1, comma 255)

The new provision is aimed at clarifying the conditions that excludes the occurrence of a permanent establishment in Italy of a non-resident investment vehicle that operates on the national territory through an independent entity that carries out, on its behalf, the asset management activity (asset managers).

Specifically, for the purposes of article 162 of TUIR, the asset manager is considered an "independent agent" – and, therefore, not suitable for giving rise to a personal permanent establishment in Italy - of the foreign investment vehicle upon meeting the following conditions:

1. the investment vehicle and its subsidiaries must be located in a Whitelist country for the purposes of the legislation referred to in Legislative Decree no. 239/1996;
2. the investment vehicle must comply with certain independence requirements which will be identified by a specific ministerial decree that will be issued soon;
3. the person who carries out the management of the non-foreign investment vehicle must participate in the economic results of the same investment vehicle to an extent of more than 25%;
4. the person who carries out the management of the foreign investment vehicle must not hold positions in the board of directors or supervisory board of the foreign investment vehicle or of companies controlled by it;
5. the person who carries out the management of the foreign investment vehicle must receive, for the activity carried out in the territory of the State, a remuneration proven by suitable documentation on transfer pricing under article 1, paragraph 6 of Legislative Decree 18 December 1997, n. 471. A provision of the Revenue Agency will define the guidelines for the application of the transfer pricing regulation pursuant to art. 110, co. 7 of TUIR to this remuneration. The Law also establishes that there is no permanent establishment of the foreign investment vehicle at the manager's premises located in Italy, due to the mere fact that the employees of this subject bring a benefit to the foreign investment vehicle.

Our professionals remain available for any further information requests.