

August Decree: alignment of accounting and tax values



Focus on

Art. 110 of Law Decree no. 104/2020 (so-called August Decree), besides the provisions on the revaluation of corporate assets, also extends the application of the provisions under art. 14 of Law no. 342/2000 concerning the possibility to realign tax values with accounting values. Para. 8 of the abovementioned article also extends such realignment possibility also to IAS/IFRS adopters.

The reasons underlying a misalignment between tax and accounting values could derive from different events, such as the adoption of the fair value option as first-time adopter or following M&A operations considered as neutral for tax purposes (e.g. assignments, mergers, demergers), or merely accounting revaluations made by applying former regulations.

Scope of application

The realignment concerns differences in value related to tangible and intangible fixed assets, provided that they are represented by legally protectable assets or rights, and therefore excludes commodities and goodwill from its scope.

As specified in Circular letter no. 14/2017, assets to be realigned must be included both in the previous FY and in the FY in which the realignment is carried out (similarly to what is provided on revaluation).

It is specified that subjects applying international accounting standards can opt for the realignment also with reference to participating interests in companies and entities that constitute financial fixed assets, even if they are not controlling or relevant interests, provided that they are not held for negotiation.

Therefore, the realignment can be applied not only to tax values of controlling and relevant participating interests (IAS 27, IAS 28, and IAS 31), but also to those held in FVTPL (non-trading) portfolio, or, as an option, in the IFRS 9 FVTOCI portfolio.

The realignment can also be carried out on a single asset (without the need to apply it homogeneously per classes) but it cannot be partial, since it must concern the whole value difference.

Application procedure

The realignment is subject to the payment of a 3% substitute tax and is effective starting from the FY following that, which the realignment refers to (2021 for subjects whose FY corresponds to the solar year). Moreover, with the only aim to balance tax (lower) values with accounting (higher) values, the realignment – unlike what provided for revaluation – does not have particular reflections on financial statements items.

It is also pointed out that subjects opting for this possibility must lock up an (untaxed) reserve – already existing in the financial statements – corresponding to the higher realigned values, net of the 3% substitute tax.

However, this reserve can be released by paying a 10% substitute tax. The utilization of the “non-released” reserve will contribute to the calculation of the taxable income for the distributing company.

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