

Revaluation of corporate assets

Law Decree dated 14 August 2020

no. 104 – art. 110

Focus on

1. Foreword - revaluation regimes currently in force

There are currently diverse revaluation regimes in force. The first one is that regulated under art. 1, para. 696 of Law dated 27 December 2019 no. 160 (Budget Law 2020) which, extending the provisions under law no. 342 dated 2000, provides that companies, cooperatives, trusts and other public and private entities that carry out a business activity, that reside within the territory of the Italian State, and that do not apply international accounting standards in the preparation of their financial statements, can revalue – departing from the current law provisions on the matter – corporate assets and participating interests in subsidiary and associate companies included among fixed assets that are registered in the financial statements of the ongoing FY at 31 December 2018. This term was extended to 31 December 2021 by art. 12-ter of law decree dated 8 April 2020 no. 23. This revaluation has exclusively a tax purpose, i.e. the above assets can be revaluated only upon the payment of a 10% or 12% substitute tax (depending on whether assets are, respectively, non-depreciable or depreciable).

The second revaluation regime currently in force is that introduced by art. 6-bis of the abovementioned Law Decree no. 23 of 2020, which provides that companies operating in the hotel and spa sectors that do not apply international accounting standards can revalue their corporate assets and

participating interests that result in the financial statements of the ongoing FY at 31 December 2019. Similarly to the one mentioned above, this revaluation has exclusively a tax purpose, but no substitute tax is due on the higher value of assets and participating interests, while the positive revaluation balance can be totally or partially released by applying a 10% substitute tax.

The revaluation introduced by the above rule is different from the other ones mainly because it also allows adjusting values for only accounting purposes, as well as recognizing them also for tax purposes upon the payment of a substitute tax.

2. Article 110 - General revaluation of 2020 corporate assets and participating interests

The rule provides for a new application of the provisions under art. 1 para. 889 to 897 of Law no. 208 dated 28 December 2015, in relation to corporate assets resulting from the financial statements of the ongoing FY at 31 December 2019, introducing a substitute tax to income taxes and to the regional tax on production activities (IRAP) and possible surtaxes equal to 3% for depreciable and non-depreciable assets and the recognition of the higher values for income taxes and IRAP purposes starting from the FY following that which the performed revaluation refers to. Should the positive revaluation balance be released, a 10% substitute tax is due.

In detail, those subjects mentioned under art. 73, para. 1, letters a) and b) of Presidential Decree dated 22 December 1986, no. 917, which do not apply international accounting standards in the preparation of their financial statements can – also departing from art. 2426 of the Italian Civil Code and from any other law provision on the matter – revalue tangible and intangible corporate assets, excluding those whose production or trade is the core business activity, as well as participating interests in subsidiary or associate companies pursuant to art. 2359 of the Italian Civil code that are included among fixed assets, resulting from the financial statements of the ongoing FY at 31 December 2019.

3. Statutory Revaluation – Tax Revaluation

Para. 4 provides that the higher value assigned to assets following their revaluation can be recognized for income taxes and IRAP purposes starting from the FY following that which the performed revaluation refers to.

Should a revaluation be performed only for accounting purposes, starting from FY 2021 and in compliance with OIC accounting standard no. 25, deferred tax liabilities must be allocated against non-deductible depreciations. Such deferred tax liabilities will be “reabsorbed” starting from the FYs in which the temporary differences will occur, i.e. starting from the FY in which tax depreciations will end and only statutory depreciations will be performed.

The payment of a substitute tax to income taxes and to IRAP and of any surtax equal to 3% of the new value of revaluated depreciable and non-depreciable assets allows recognizing the higher values of assets for income tax purposes starting from the beginning of the FY following that the performed revaluation referred to; e.g., if the FY corresponds to the solar year, this is the FY starting on 1st January 2021.

Para. 3 allows recognising also the positive revaluation balance for tax purposes, which can be totally or partially released through the payment, by the company, of a 10% substitute tax.

The recognition of the new values for the purposes of determining appreciations or depreciations starts in the fourth FY following that in which the revaluation occurred, e.g. if the FY corresponds to the solar year, starting from 1st January 2024.



4. Procedure and compatible rules

For the effect of the provisions under para. 3 of art. 110 at issue, the revaluation must be performed in the financial statements or accounts of the FY following the ongoing one at 31 December 2019 and can be performed separately for each asset. The higher values must be registered in the inventory register and in the explanatory notes to the financial statements. Therefore, in contrast with the provisions stated under art. 11 of law dated 21 November 2000, no. 342 – which is however referred to as compatible – the revaluation must not necessarily be performed by homogeneous asset categories.

Like in case of other revaluations, also in this case, directors and the board of statutory auditors must indicate and justify the criteria applied to the revaluation in their reports, which can never be higher than the values actually attributable to assets with regard to their quantity, production capacity, to their actual possible economic use in the business, as well as to the current values and to the listings on Italian or foreign regulated markets.

With regard to the recording and use of the reserve, explicit reference is made to art. 13 of law dated 21 November 2000, no. 342. In fact, the positive revaluation balance must be allocated to capital or to a special reserve and any other use is excluded. The reserve, if not allocated to capital, can be reduced only in compliance with para. 2 and 3 of art. 2445 of the Italian Civil Code (i.e. complying with the fulfilments provided for the reduction of share capital). If the reserve is used for loss coverage, profits cannot be distributed until the reserve is restored or reduced to a corresponding extent through a resolution by the extraordinary shareholders' meeting.

5. Payment of substitute taxes

Substitute taxes under paragraph above must be paid in no more than three equal instalments. The first one is due within the term provided for the settlement payment of income taxes referred to the FY which the performed revaluation refers to. The second and third instalments are due within the terms respectively provided for the settlement payment of income taxes referred to the following FYs. Amounts due can be offset pursuant to section I, title III of legislative decree dated 9 July 1997, no. 241.



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