

Tax news

April 2017

Italian White list amended

On 3 April 2017, the Ministerial Decree of 23 March 2017 was published in the Official Gazette n. 78.

The Ministerial Decree, issued by the Ministry of Economy and Finance, amends the list of jurisdictions that allow adequate exchange of information with Italy (White list) as set out in the Ministerial Decree of 4 September 1996.

The following countries have been added to the White List:

- 1) Andorra
- 2) Barbados
- 3) Chile
- 4) Monaco
- 5) Nauru
- 6) Niue
- 7) Saint Kitts and Nevis
- 8) Saint Vincent and the Grenadines
- 9) Samoa
- 10) Uruguay
- 11) Vatican City State.

The White List had already been significantly amended by the Ministerial Decree of 9 August 2016, which:

- a) added 50 new countries (e.g. Switzerland, Liechtenstein and Hong Kong);
- b) introduced a rule whereby countries and territories are to be removed from the list, by means of a decree, in case of failure to allow adequate exchange of information with Italy.



Under Italian domestic tax laws, residents of (and institutional investors located in) one of the White List countries can benefit

from favorable special tax regimes on the proceeds from investments made in Italy. These tax regimes generally result in an exemption from Italian withholding taxes or other taxes (e.g., so-called “substitute taxes”) levied at source on capital gains.

As mentioned, the new White List has added many new countries and territories, including some which have been traditionally considered as “non-cooperative” and, as such, historically “black listed” for Italian tax purposes. As a result of these amendments, the White List counts as many as 134 countries.

The addition of many countries to the White List should allow foreign investors to benefit from a more favorable tax regime, especially, but not only, with respect to financial income; therefore, this must be regarded as a favorable measure that may boost foreign investment.

Law decree on urgent tax measures approved by the Council of Ministers

On 24 April 2017, the Decree n. 50/2017 was published in the Official Gazette, containing urgent tax provisions and development measures.

The main tax measures include:

- introduction of further incentives for equity crowdfunding;
- extension of the incentives for innovative start-up companies;
- amendments to the allowance for corporate equity (ACE) regime;
- extension of the split payment system;
- amendments to the patent box regime.

Normal Value

The Decree replaces the concept of “normal value” with a transfer pricing method aligned with the OECD’s arm’s length principle, adds corresponding adjustments to Italian tax laws, and updates the list of intellectual property items eligible to qualify for the patent box regime.

In the Italian tax legislation reference to the arm’s length principle is included in the notion of “normal value”.

Relevant provisions are included in articles 9 paragraph 3 and 4, and article 110, paragraph 7 of the Corporate Tax Act.

Italian Tax Authorities may make transfer pricing adjustments if operations between related parties are not aligned with the conditions and prices that would be applied between independent

parties under comparable circumstances.

The new law establishes that the transfer price applied within intercompany transactions must no longer be set according to the “normal value” principle indicated in art. 9 of the Corporate Tax Act, but to the arm’s length principle, thus adapting the national law to the OECD guidelines.

Italy’s patent box

In 2015, Italy enhanced its first Patent Box regime. The tax relief consists of an exclusion from the taxable base – for both corporation tax (IRES, with an ordinary rate of 25.7% and 24% from FY2017) and regional tax (IRAP, with an ordinary rate of 3.9%) purposes – of a percentage of the income derived from the direct use or license of intellectual property (IP) assets by companies and commercial entities which perform research and development (R&D) activities. The regime is optional, has an irrevocable, five-year duration and can be renewed.

IP covered by the Italian Patent Box

The intangible assets qualifying for the Italian patent box regime include:

- ✓ industrial patents, utility models, biotech inventions, patents for plant varieties, semiconductors and topographies;

- ✓ business, commercial, industrial and scientific information and know-how that can be held as secret and which are eligible for legal protection;
- ✓ formulae and processes;
- ✓ design models that are legally protected; and
- ✓ software protected by copyright.

R&D expenses included in the Italian Patent Box

The regime covers traditional R&D activities such as fundamental and applied researches, but is also extended to cover a large number of investment, including for instance: studies and actions on brand development and product design, processes and services; activities carried out in order to realize software protected by copyright; preventive research, tests, market surveys and other studies; communication and promotional activities, able to increase the distinctive features and the prestige of a brand.

Updates

The new law updates the list of intellectual property assets eligible to benefit from the Patent box regime.

Trademarks are excluded from the tax benefit of the optional regime starting from FY 2017. Requests for application of the regime filed for FY 2015 and 2016 remain valid, but cannot be renewed after five year.

Accelerated depreciation – clarifications issued

On 30 March 2017, the Italian Tax Authorities issued the Circular Letter n. 4/E providing clarifications on the temporary accelerated depreciation regime amended and enhanced by Law N. 232 of 11 December 2016 (the Budget Law for 2017).

In particular, the Tax Authorities provide clarifications on and specific examples about qualifying taxpayers and qualifying tangible and intangible assets, the requirements to be met and the procedure concerning the above mentioned regime.

The temporary accelerated depreciation regime, introduced by Law n. 208 of 28 December 2015, and which has been amended and enhanced by the Budget Law for 2017, has been extended to cover qualifying tangible assets, except for certain vehicles not exclusively used in running the company business, purchased or acquired through a financial lease before 30 June 2018.

However, for assets purchased from 1 January 2018 onwards, the relevant purchase orders must be accepted by the seller, and at least 20% of the purchase price has to be paid no later than 31 December 2017.

In addition, the acquisition cost of certain tangible assets, specifically listed in annex A to the Law 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 taxpayers benefitting from this favourable regime, the acquisition cost of certain intangible assets, specifically listed in annex B, is also increased by 40% for depreciation purposes.

Who benefits?

The benefit is available to the following taxpayers, regardless of their legal form and size, and of the industry in which they operate:

- Italian enterprises and permanent establishments of non-resident enterprises;
- Non Business organizations;
- Independent workers;
- Natural persons who have a business, trade or profession, even if they already benefit from other tax breaks, such as the ‘*regime di vantaggio*’ tax regime. Professions benefitting from the “*regime forfettario*” tax regime are excluded.

Eligible assets

The measure applies to assets purchased under a transfer of ownership agreement or a finance lease (in the latter case only the lessee is eligible for the benefit). It also applies to assets produced in-house or under a procurement contract.

The measure applies exclusively to new assets and not to those that have already been used in any way. For example, cars displayed in a showroom are eligible, while a car used in road tests by a dealership is not.

Complex assets, which sometimes include used assets, are eligible as long as the overall complex asset is new. In other words, the cost of the used assets

must not account for most of the cost of the complex asset as a whole.

Ineligible assets

The benefit does not apply to:

- intangible assets;
- assets obtained under an operating lease or rental agreement;
- tangible assets whose tax depreciation rate (set in the Ministerial Decree of 31 December 1988 – the ‘Decree’) is less than 6.5 percent;
- buildings and construction work;
- assets listed in Appendix 3 to the 2016 Budget Law (e.g. rolling stock and railway and tramway equipment).



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 relevant technical requirements and is connected to the relevant production management systems or supply networks.



Contacts

Bernoni & Partners

Int. T + 39 02 7600 8751
E info@bgt.it.gt.com

Address: Via Melchiorre Gioia 8, 20124 Milano
Offices: Brescia, Milan, Padua, Rome, Trento,
Trieste, Turin

<http://www.bgt-grantthornton.it/>

The guidelines given above are intended for general purposes only and should not be used alone when taking decisions. Bernoni & Partners does not take any legal responsibility for the consequences of any decision or action taken as a result of the information set out above, nor does it take any responsibility for the failure to include information. At the time of publication the changes to tax legislation may be at the proposal stage and details may change.

Clients are encouraged to seek appropriate professional advice.

We will be pleased to discuss with you the particular application of the changes to your own circumstances. To this end please contact Alessandro Dragonetti or Gabriele Labombarda at their e-mail address below:
alessandro.dragonetti@bgt.it.gt.com
gabriele.labombarda@bgt.it.gt.com

Some pieces of news herein contained may be material to Advisory Services issues. Clients who are interested in delving into these items are encouraged to contact Stefano Salvadeo, Advisory Services specialist, at the following email address: stefano.salvadeo@bernoni.it.gt.com

© 2017 Bernoni & Partners. All rights reserved.

'Grant Thornton' refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires.

Bernoni Grant Thornton (Bernoni & Partners) is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.
www.bgt-grantthornton.it