



Tax news

December 2017

Budget Law for 2018 approved

On 23 December 2017, the Budget Law for 2018 was approved by the Italian Parliament.

The most relevant tax measures contained in the Law relate to:

- introduction of a tax on digital transactions;
- amendments to the domestic definition of permanent establishment;
- postponement of the application of the tax on entrepreneurial income, introduced by Law No. 232 of 11 December 2016 (the Budget Law for 2017);
- amendments to the taxation of gains realized on the disposal of qualifying shares;
- extension of certain incentives, e.g. the temporary accelerated depreciation regime and the tax credits for expenses incurred for the improvement and refurbishment of immovable property;

- introduction of mandatory electronic invoicing from 2019; and
- postponement of the increases in the current VAT rates to 2019.

Web Tax

The Budget Law for 2018 introduces, as of 1 January 2019, a new “tax on digital transactions related to the performance of services carried out through electronic means” and rendered by resident and non-resident companies to Italian businesses and other entities qualifying as withholding agents under the Italian tax law, other than Italian permanent establishments of non-resident companies.

A 3% tax, net of VAT, will apply to services carried out through electronic means, i.e. services supplied through the Internet or an electronic network, the nature of which makes the performance completely automatic, with minimum human intervention and

for which the information technology component is essential.

The revised domestic definition of permanent establishment

The Budget Law for 2018 also introduces a different domestic definition of permanent establishment according with the one provided by BEPS Action 7.

Under the new provision, a significant and continuous economic presence in the territory of a State set up in a way that it does not result in a substantial physical presence in the same territory may constitute a PE.

This implies the possibility of a PE presence even when a company does not have a physical presence in the Italian territory to the extent that other factors may indicate a significant presence (e.g., revenues, number of customers etc.).

Amendments to the taxation of gains realized on the disposal of qualifying shares;

The new tax treatment provides a “flat” 26% substitute tax that would be aligned with the capital gains tax of “non-qualified shares” and gains realized by “physical persons.”

Such provision applies to income from capital earned from 1 January 2018 and to the capital gains realized starting from 1 January 2019.

Unless a double tax treaty applies, 49.72% of the capital gain (58.14% starting from 2018) realized by a non-resident entity from the transfer of any Italian shares is therefore subject to CIT in Italy at a 24% tax rate, while starting from 2019 it would be subject to the 26% substitute tax.

The provision also partially modified the “black list” dividends regime stating that dividends matured during the previous fiscal years when the subsidiary was resident in countries not included in the (black) list of the Decree issued on 21 November 2001, and distributed starting from FY 2015 are not considered as black list.

Changes to the interest expense rule

The Law repeals the last provision of Article No. 96, paragraph 2, of the Italian Tax Code that provides the possibility of increasing the Gross Operating Profit (ROL) for an amount equal to the dividends relating to non-resident subsidiaries. This amendment is in

line with the principle included in art. 4 of Directive 2016/1164/UE (i.e., Anti-Tax Avoidance Directive) and will have effect starting from FY 2017.

Tax credit for advisory expenses related to the SME listing

The Law recognizes a tax credit equal to 50% of the advisory expenses and up to €500,000 maximum, incurred until 31 December 2020 in order to obtain the listing of SME companies in a regulated market of a European Union / European Economic Area Member State. The advisory expenses can be credited up to €20 million for FY 2019 and €30 million for FY 2020 and 2021, starting from the fiscal year following the one in which the listing was obtained.

Extension of extra-amortization of certain tangible and intangible assets

The Law extends the 40% extra-amortization (i.e., up to a total of 140% tax amortization), introduced by the budget law for 2016 in relation to the purchase of tangible assets for which the amortization rate for tax purposes exceeds 6.5%.

In order to qualify for this measure, the assets have to be purchased or rented under a financial leasing contract by 30 June 2018. However, for assets acquired between 1 January 2018 and 30 June 2018, purchase orders need to be accepted by the seller by 31 December 2017 and at least

20% of their price needs to be paid by the same date.

The Law also introduces a 150% extra-amortization for some listed “smart equipment” which is allowed to benefit from specific digital and technological transformation processes under the model promoted by the Italian Government plan for industrial growth named *Industry 4.0 Plan*.³ An additional 40% extra-amortization is also introduced for certain intangible assets such as software, IT systems and platforms related to the *Industry 4.0 Plan*.

Extension and enhancement of the R&D tax credit

The tax credit for R&D expenses is extended up to the fiscal year ending on 31 December 2020 and for an amount equal to 50% of the qualifying R&D expenses exceeding the average of the same expenses incurred in FYs 2012, 2013 and 2014. The R&D expenses are credited up to a yearly maximum amount of €20 million instead of the previous €5 million threshold.

The Budget Law extended the R&D credit also to the R&D expenses incurred in connection with agreements entered into with non-Italian European Union (EU), European Economic Area (EEA) and white listed resident companies. Therefore, also the R&D expenses outsourced by foreign entities to Italian companies are now eligible for the tax credit.

Flash News

Revision to the treaty between China (People's Rep.) and Italy – negotiations

According to a joint statement of 18 December 2017, published by the Italian government following a meeting between officials from China (People's Rep.) and Italy, the two countries have expressed their intention to revise the China (People's Rep.) - Italy Income Tax Treaty (1986). Further developments will be reported as they occur.

Tax credit for the culture sector – amendments enacted

On 12 December 2017, Law No.175 of 22 November 2017, providing measures to promote the entertainment sector, was published in Official Gazette No. 289. The Law will enter into force on 27 December 2017.

Under article 5 of the Law, the tax credit for the culture sector (ArtBonus), introduced by Law Decree No. 83 of 31 May 2014, has been extended to contributions to qualifying persons operating in the entertainment sector, including national theaters and theaters of significant cultural interest, concert/orchestra institutions and festivals.

CbC reporting – deadline postponed

The Italian Tax Authorities issued Protocol No. 288555 of 11 December 2017 providing further implementing rules with respect to the country-by-country (CbC) reporting obligation introduced by Law No. 208 of 28 December 2015.

In particular, qualifying reporting entities must submit CbC reports related to fiscal year 2016 (first CbC reports) within 60 days from the day of issuance of the Protocol, i.e. by 9 February 2018.

FTT return model published

On 15 December 2017, the Italian Tax Authorities issued Protocol No. 294475 approving the new financial transaction tax (FTT) return model and instructions. The FTT return must be electronically filed by 31 March of each year, but no return needs to be filed if the FTT paid does not exceed EUR 50. The model and instructions are available on the Italian Tax Authorities website.



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