

# Tax news

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## Voluntary disclosure procedure – clarifications issued

On 12 June 2017, the Italian Tax Authorities issued the Circular Letter No. 19/E about the Voluntary Disclosure procedure introduced by Law Decree No. 193 of 22 October 2016.

In particular, the Italian Tax Authorities provided specific clarifications with respect to the scope of the procedure and the related deadlines, focusing on the newly introduced option available to qualifying taxpayers to self-assess and spontaneously pay the entire amount due (including any applicable penalties and interest) in order to benefit from the maximum reduction of the relevant administrative penalties. Circular Letter No.19/E illustrates and clarifies the new fiscal measures applicable to the second edition of the Voluntary Disclosure program. Particularly, the decision to reopen the procedure to rectify eventual violations or omissions

was driven by the intention to offer a further chance to taxpayers in view of the fact that the fight against international tax evasion was going to be particularly intensified.



Additionally, the scope of the network of agreements on the exchange of tax information has been extended. This new edition of the Voluntary program has extended the list of Countries to further mitigate sanctions and avoid the application of the doubling of terms for assessment and reject violations of tax monitoring obligations. Guernsey, Hong Kong, Cayman Islands, Isle of Man, Cook Islands, Jersey and Gibraltar are also included in this list and have entered into the information

exchange agreement in force as of 24 October 2016.

Taxpayers, who decide to remedy spontaneously the omissions and irregularities committed until September 30, 2016 with respect to the holding of financial assets, may apply to Italy's second version of the Voluntary Disclosure Program by 31 July 2017, while payment of the penalties and submission of the supporting documentation must be made by 30 September 2017. On 13 June 2017, the Italian Tax Authorities made available a calculation software for penalties and interest due by taxpayers initiating the voluntary disclosure procedure. In particular, the tool will help those taxpayers who choose to self-assess and spontaneously pay the total amount due in order to benefit from the maximum reduction of administrative penalties available.

# Conversion of Law Decree no. 50/2017- Corporate income tax measures

The Parliament converted into law the Law Decree No. 50 of 24 April 2017, published in the Official Gazette No. 144 of 23 June 2017.

The main tax measures include:

- Patent box regime;
- Amendments to the Allowance for Corporate Equity (ACE) regime;
- Normal value for the transfer price regime;
- Collaboration for multinational enterprises.

## **Patent Box without trademarks**

The Conversion Law does not significantly alter article 56 of Law Decree no. 50/2017. In order to align Italian tax laws with the OECD guidelines contained in the final report on BEPS Action 5, trademarks have been removed from the list of qualifying intangibles. The new rule applies to taxpayers who opted for the Patent Box regime after 31 December 2016.

Options exercised with respect to trademarks in the tax years in progress at 31 December 2015 or at 31 December 2016 have been grandfathered and will remain valid until their natural expiration (i.e. 2019 and 2020, respectively) or 30 June 2021 at the latest.

## **Reduced rates for the Allowance for Corporate Equity (ACE)**

Italian resident companies (and permanent establishments of non-resident enterprises) can benefit from ACE, which is calculated by multiplying net equity increases since 31 December 2010 by a nominal

rate of interest. The allowance is deducted from the company's net taxable income and, if in a given year it exceeds the company's net taxable income, the surplus can be carried forward indefinitely.

The ACE rates were 4 percent for 2014, 4.5 percent for 2015 and 4.75 percent for 2016. The Conversion Law reduces the ACE rates to 1.6 percent for 2017 and 1.5 percent as of 2018. In calculating advance instalments of income taxes for 2017, taxpayers must use the new ACE rates when computing their 2016 income taxes, as if the new rates were already in force last year.

The Conversion Law has repealed the proposed amendments to the ACE base; the qualifying increase in net equity will be measured against the company's net equity at the end of the fifth previous year.

## **Transfer pricing rule more OECD-compliant**

Article 59 of Law Decree no. 50/2017 amends the Italian transfer pricing rule by replacing the concept of fair market value (*valore normale*) with a more direct reference to the arm's length criterion used in the OECD guidelines. As a result of another new rule introduced by article 59, corresponding downward adjustments resulting in lower taxable income will no longer be conditional on a Mutual Agreement Procedure (MAP). These will also be available after international audits, whose results are shared by the cooperating countries, upon receipt of an application from

the taxpayer, following a final arm's length transfer pricing adjustment made by a country with which Italy has a tax treaty allowing an adequate exchange of information.

## **Cooperation and enhanced collaboration for multinational enterprises**

Article 1-bis of Law Decree no. 50 introduces a special rule for MNEs, whereby certain non-resident enterprises may apply to the Italian Revenue Agency for a ruling, in order to verify whether their business activities in Italy may trigger a PE or voluntarily disclose the existence of a previously unreported PE. If a PE is deemed to exist, the applicant can follow a settlement procedure for the open fiscal years, paying the additional taxes and interest due, but lower penalties. No criminal consequences will ensue and, as an additional benefit, the applicant can automatically access the Italian cooperative compliance regime. Non-resident enterprises eligible to apply for a tax ruling are those that (i) belong to groups whose worldwide consolidated annual revenues is higher than Eur 1 billion, and (ii) have annual sales of over Euro 50 million in Italy, obtained with the support of Italian entities belonging to the same group. The rule was meant to apply to enterprises of the digital economy. The final version is not narrowly worded and should also apply to enterprises operating outside the digital economy.

# Latest publication on the Official Gazette

## Measures for economic growth in south Italy

On 21 June 2017, Law Decree No. 91 on 20 June 2017 entered into force, following its publication in the Official Gazette No. 141 on 20 June 2017.

The Law Decree provides for targeted measures to promote economic growth in Southern Italy. In particular, the following tax measures have been introduced:

- the temporary accelerated depreciation regime related to the government's Industry Plan 4.0 has been extended to include qualifying tangible assets purchased before 31 July 2018. For assets purchased after 1 January 2018, the relevant purchase orders must be accepted by the seller, and at least 20% of the purchase price must be actually paid, by 31 December 2017; and
- the Law Decree provides for specific procedures, requirements and conditions to establish a special economic zone (*zona economica speciale, ZES*). Enterprises operating in the ZES will benefit from simplified procedures and favourable tax incentives, including an enhanced regional tax credit.

The Law Decree amends the regional tax credit introduced by Law No. 208 of 28 December 2015 with respect to the amount of tax credit available, the relevant calculation method and the maximum amount of qualifying costs.

In particular, qualifying enterprises investing in certain regions in Southern Italy are entitled to a tax credit in relation to certain new business assets purchased until 31 December 2019. For Basilicata, Calabria, Campania, Puglia, Sardinia and Sicily, the tax credit is equal to:

- 45% for small enterprises;
- 34% for medium enterprises;
- 25% for large enterprises.



For Abruzzo and Molise, the tax credit is equal to:

- 30% for small enterprises;
- 20% for medium enterprises;
- 10% for large enterprises.

Furthermore, the maximum amount of costs eligible for the tax credit per single investment project is:

- Eur 3 million for small enterprises;
- Eur 10 million for medium enterprises;
- Eur 15 million for large enterprises.

Implementing rules will be provided by way of a Decree of

the President of the Council of Ministers.

## Anti-Money Laundering Directive implemented

On 19 June 2017, Legislative Decree No. 90 of 25 May 2017 was published in the Official Gazette No. 140. The Legislative Decree, which enters into force on 4 July 2017, implements the Anti-Money Laundering Directive (2015/849) (see European Union-1, News 8 July 2016), focusing on preventing money laundering and terrorist financing.

In particular, credit and financial institutions, professionals, providers of gambling services and other qualifying persons will be required to identify and assess risks regarding money laundering and terrorist financing, and report information on suspicious transactions.

Furthermore, the Legislative Decree introduces an ultimate beneficial ownership register (*Registro dei titolari effettivi*) and amends applicable administrative and criminal penalties.



#### Contacts

##### Bernoni & Partners

Int. T + 39 02 7600 8751  
E [info@bgt.it.gt.com](mailto: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/>

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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](mailto:alessandro.dragonetti@bgt.it.gt.com)  
[gabriele.labombarda@bgt.it.gt.com](mailto:gabriele.labombarda@bgt.it.gt.com)

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