

Budget Law 2023

Expert's Opinion

Budget Law 2023 provisions for wealth planning

Carlotta Benedet

Senior Manager Bernoni Grant Thornton

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Budget Law main updates

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Manager Grant Thornton HR

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Focus on

New provisions on tax litigation

Alessandro Foderà

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The Law was passed by the new Government, installed on 23 October 2022 and presented to the Parliament only in November and therefore, in order to avert the adoption of provisional norms, it was subject to a very fast approval procedure, during which the text was not changed much compared to the draft law approved by the Government on 21 November.

The Law was certainly affected by the effects of the international context and, particularly, by the economic consequences connected to the increase in the cost of raw materials, which strained the economic sustainability of Italian companies and families. A 35 billion measure, 20 of which (almost 60%) are allocated to face the increase in energy costs by introducing discounts on VAT and new tax credits, mainly in favour of energy- and gas-intensive businesses, as well as through the elimination of general charges that weigh on users.

Many measures are not long-term provisions and some only concern quarter 1, 2023, but they reflect the prudent and realistic approach of the Government, pending interventions that could concretely support the economic recovery.

The Law can still be considered an “emergency” provision, being aware that the mass of aids that characterized the whole pandemic period cannot lead to a recovery of the economic system, but rather relieve its suffering in the short term. Now there is the need for planning, long-term programmes, brave industrial policies allowing companies to invest confidently, and strategies to improve GDP, which is crucial for the country’s wealth.

The considerable resources aimed to relieve the burden of energy costs certainly limited the action of the Government, which, however, also intervened on other issues – though limiting its scope of action to 2023 in most cases. Bernoni Grant Thornton already analysed the main updates introduced by Budget Law 2023 through its media channels and this TopHic edition focuses on two specific issues.

In fact, the **Expert’s Opinion** article analyses the revaluation of the cost of land, participating interests, UCIs shares, and life insurance policies, as well as the terms for the application of tax reliefs to the distribution and transfer to shareholders of real estate and movable assets recorded in public registries and not used in the corporate activity and to the transformation of joint-stock companies that manage such assets as their exclusive or main activity into a partnership.

The **Focus on** article analyses the updates introduced by the legislator concerning tax disputes, particularly the new opportunities for taxpayers to settle them under concessional terms, even in case of litigations already initiated with a court or before the Court of Cassation.



The “tax amnesty” is absolutely central in Budget Law, since its final purpose is to recover, for example through the so-called “Rottamazione Quarter” measure, a discrete portion of overdue credits through a system of concessions that will allow taxpayers – many of which are still struggling due to the post-pandemic period – to regularize their position by paying, in some cases, only the principal due and annulling penalties, interest, and collecting commissions (also if amounts due were already included in previous concessional measures that lapsed due to omitted payment).

The collection of overdue debt will be accompanied by control activities by the Revenue Office, which will be implemented through the so-called “fisco digitale” service and that will also regard the new measures introduced. The aim is that of recovering at least 10 billion for each year (2023, 2024 and 2025), although these can still appear as minimal amounts compared to the total tax evasion, which is estimated to be of about 100 billion Euro per year in Italy.

Higher inland revenue should derive from the tax on additional income due by energy companies that produce, sell, distribute, and import electricity, natural gas or oil products and, hopefully, as an effect of the introduction of the provision concerning the tax on capital gains and other proceeds realized on crypto assets, as well as due to the clampdown on the deductibility of expenses and other charges deriving from transactions occurred with blacklist countries.

Pending an organic tax reform that has not yet been issued, the legislator also intervened on the tax on individual income from business and/or self-employment activities, increasing the threshold of revenues and proceeds to access the flat-rate taxation regime from 65.000 Euro to 85.000 Euro and providing for the immediate exclusion from the regime (and the subsequent application of ordinary IRPEF) once the 100.000 Euro threshold is exceeded, starting from the year in which this occurs.

We also point out the introduction – as a tentative measure for 2023 – of the so-called incremental flat tax in favour of those taxpayers that do not apply the flat-rate taxation regime, which allows applying a reduced tax on any income increases realized in 2023 compared to the income realized in the previous three years, within a maximum limit of 40.000 Euros.

Following the interruption of the discussion for the approval of the text of the law concerning the tax reform due to the lack of a political agreement, the Italian Government announced that it is working on a new text, that will be mainly aimed to simplification, e.g., through a substantial review of the so-called tax expenditures, which is the complex of all tax concessions that are difficult to apply and whose related benefits or refunds are deferred.



Further provisions that are worth analysing are: the extension of the application of the so-called Superbonus 110% given the presence of specific requirements; the increase of the so-called bonus for furniture from 5.000 to 8.000 Euro; and the reduction from 10% to 5% of the substitute tax applicable on performance-based bonuses granted following the subscription of supplementary collective agreements.

Lastly, we point out that the legislator also intervened on labour, tax, and social security, by providing, among others, the following measures: cut of the tax wedge for 2023; tax allowances for companies that hire under-36 people and women in disadvantaged situations; new tax allowances for companies that hire receivers of the so called “reddito di cittadinanza” (basic income); updates on remote working, occasional work, and parental leave (besides the introduction of the so-called fuel bonus under Law Decree no. 5/2023).

Should you be interested in further details on the updates introduced on labour, tax, and social security, watch the video of the webinar held on January 20, 2023, available at this link ([click here](#)), or read the circular letter drawn up by Grant Thornton HR experts at this link ([click here](#)).

Hopefully, Budget Law 2023 will be a springboard to an economic recovery that can allow businesses and families to be more optimistic about the future. Future trends, however, do not only depend on the legislator's choices, but also on ours and before taking any choice, either brave or not, the prior opinion of an expert can be crucial, particularly for businesses and when a choice can impact their future and the future of their collaborators.



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Budget Law 2023 introduced interesting concessions for an efficient wealth planning, also in a succession/donation perspective.

Revaluation of participating interests, UCIs shares and insurance policies

Participating interests and land - Few weeks after the closure of the term available for the revaluation of participating interests and land, i.e. 15.11.2022, the original term introduced by Law 448/2001 (which should have been an extraordinary provision in 2001 but which was repeatedly proposed) was re-opened, allowing individuals, general partnerships, non-commercial entities and non-resident persons without a permanent establishment in Italy to revalue participating interests and land held at 01.01.2023 outside the scope of their business activity.

The relevant substitute tax has been increased to 16% and 15 November 2023 has been established as the deadline to swear the expert's report and pay the substitute tax (or the first instalment, in case of payment by instalments).

An important update introduced by Budget Law 2023 is the possibility to also revalue participating interests held in listed companies, thus extending the number of taxpayers that can benefit from this provision.



It is specified that the benefits of the revaluation of the cost of participating interests made by the testator lapse in case of subsequent transfer due to inheritance succession. In fact, following the re-introduction of the inheritance tax, the tax cost of participating interests for heirs is equal to the value relevant for the purposes of the declaration of succession, rather than to the tax cost for the testator – as it happens in the case of donations. This implies the need to carefully evaluate, within the wealth and succession reorganization and planning activities, the opportunity to redetermine participating interests either entirely or partially, as well as the opportunity to transfer them through a deed of donation inter vivos rather than in the will.





UCI and insurance policies - The Law provides for the possibility to revalue shares in UCIs and life insurance policies classified under number 1 and 5 (respectively, concerning the duration of human life and capitalization contracts) by paying a substitute tax equal to 14% on a value represented by:

- the difference between the value at 31.12.2022 recorded in periodic statements and the interest subscription cost – as concerns UCIs;
- the difference between the mathematical reserve at 31.12.2022 and premiums paid – as regards life insurance policies.

With regard to UCIs, the legislator opted for an “intermediate” solution, pending a reform on the taxation of financial income, which has been thoroughly discussed in the recent past and which supposed the unification of other income with capital income.

The possibility to re-determine the value of UCIs and align them to their value at December 2022 allows investors, in fact, to disinvest capital gain funds, benefitting from a reduced tax rate (14%) compared to the ordinary one (26% or IRPEF progressive tax).

The above implies the need to carry out a careful analysis of investors’ fund portfolio, in order to identify those UCI shares subscribed at a cost that is lower compared to their market value at December 2022.

As explained for participating interests transferred due to inheritance succession or donations, a careful analysis is required for UCIs shares, too, in order to evaluate the opportunity to benefit from this provision.

Pending clarifications on the concept of “homogeneous category” of funds, which the revaluation is to be applied to, it is advantageous for taxpayers to identify the capital gain funds among their (Italian and foreign) asset, since, should the revaluation of the cost be convenient, the option must be notified to the Italian intermediary by 30.06.2023 and, in the case of a foreign intermediary, if the term for exercising the option is longer (as exercised in the 2022 tax return), the substitute tax must still be paid by 30.06.2023.





The Legislator also introduced for the holders life insurance policies classified under number 1 and 5 (respectively, concerning the duration of human life and capitalization contracts), whose expiry is after 31.12.2024, the possibility to release the difference between the value of mathematical reserves at 31.12.2022 and the premiums paid by that date. If, on the one hand, policyholders are required to carry out an accurate assessment of the effective benefit deriving from exercising this option, since the payment of the substitute tax is due before the actual collection of the policy itself (by 16.09.2023), on the other hand, insurance companies are required to identify those policies concerned by this provision (making sure that, also from a fiscal point of view, they can actually be considered as classified under number 1 and 5) and to correctly calculate the value of the relevant mathematical provisions to be (timely) communicated to subscribers.

Concessional assignment, transfer and transformation

- The last provision among those introduced by the 2023 Budget Law to favour an efficient wealth and succession planning concerns the reintroduction of the regulation on the concessional assignment and transfer of real estate and registered movable assets to shareholders of certain types of companies, as well as the possibility to minimize the tax burden in case of transformation of such companies into general partnerships.

In fact, this regulation not only allows reorganizing the real estate of many Italian families by optimizing the tax burden in terms of IRES, IRAP, IRPEF, registration tax, mortgage and cadastral taxes, but also to solve the regulatory issue concerning non-operating companies and assets to shareholders.

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Focus on

New provisions on tax litigation

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The two provisions which most impact taxpayers are: (i) the possibility to settle tax payables entrusted to the tax collection agency between 01 January 2000 and 30 June 2022 and (ii) the possibility to settle tax litigations still pending at 01 January 2023.

According to the first provision, so-called “rottamazione quarter”, tax payables entrusted to tax collection agents from 1 January 2000 to 30 June 2022 can be paid off by settling only the amount due as principal (and amounts possibly due as refund of expenses for enforcement procedures and notifications), without interest or penalties.

This favourable provision applies to all tax payables entrusted to a tax collection agency with the exception of: customs duties and taxes; import VAT; amounts due after the recovery of State aids; receivables originating from rulings of the Court of Auditors; fines and penalties for criminal convictions; driving penalties, with the exception of interest; social security contributions to pension funds, if they do not adopt this provision).

The provision above allows debtors to settle their payables and return to a “better fortunes” status, as regards both tax and social security contributions, thus preventing precautionary and/or enforceable procedures (besides allowing the termination of open enforcement actions); in addition, the interesting possibility is provided to settle payables in 18 instalments, the first due on 31 July 2023 and the last on 30 November 2027.

The possibility to settle tax payables entrusted to a collection agency is available also to those debtors who did not opt to do so when the possibility was previously granted, to those who applied but forfeited, or simply to those who applied but wish to further defer the payment of the residual amount due.

In short, this provision is aimed at helping all those businesses and individual taxpayers facing financial difficulties and at risk of suffering enforcement actions by the tax collection agent, which could further and irrevocably undermine them. An aspect of said provision needs to be specifically underlined, i.e. the forfeiture of the relevant benefits in case of late payment of even only one of the instalments for over 5 days.



Instalments will therefore have to be managed very carefully, as it is not even possible to offset the amounts due with other tax credits by filing an F24 form.

The settlement of pending litigations concerns other aspects.

From a literal point of view, this provision seems to impact all litigations handled by tax courts (the only proceedings expressly excluded are those concerning the EU's traditional own resources and amounts due as recovery of State aids) in which the Italian Revenue Office is a disputing party, pending in all member States and at all levels of jurisdiction - including those before the Court of Cassation, also due to adjournment - as at 01 January 2023.

In case of proceedings regarding taxes, penalties and interest, disputes are settled as follows: pending appeals before the Court of first instance, with the payment of 90% of the taxes due; judgements of the court of first instance (filed by 01 January 2023) in favour of the taxpayer (provided that it is the last judgement filed), with the payment of 40% of the taxes due; judgements of the court of second instance (filed by 01 January 2023) in favour of the taxpayer (provided that it is the last judgement filed), with the payment of 15% of the taxes due; tax litigations pending before the Court of Cassation in which the Revenue Office is the losing party in all previous instances, with the payment of an amount equal to 5% of the value of the taxes due; in all other cases, with the payment of 100% of the taxes due (e.g. when the taxpayer is the losing party in the last judgement issued).

Disputes concerning only penalties (not related to an underlying tax) can be settled with the payment of 15% of the amount in case of judgement in favour of the taxpayer in the last judgement issued (and filed by 01 January 2023) and with the payment of 40% of the penalties in all other cases.

Also in this case, in order to help taxpayers in financial distress, the possibility is granted to settle the payment in 20 quarterly instalments for the same amount (the first one due by 30 June 2023).

Two "critical" aspects of the dispute settlement above need to be highlighted.

The first one is the uncertainty regarding the possibility to settle disputes concerning tax bills deriving from an automatic control on tax returns (typically, those disputing amounts stated but not paid). From a literal point of view, the provision also seems to include litigations against these deeds. The explanatory report, however, limits the measure only to "enforcing" deeds.

However, it is deemed that these disputes should be included within the scope of the law.

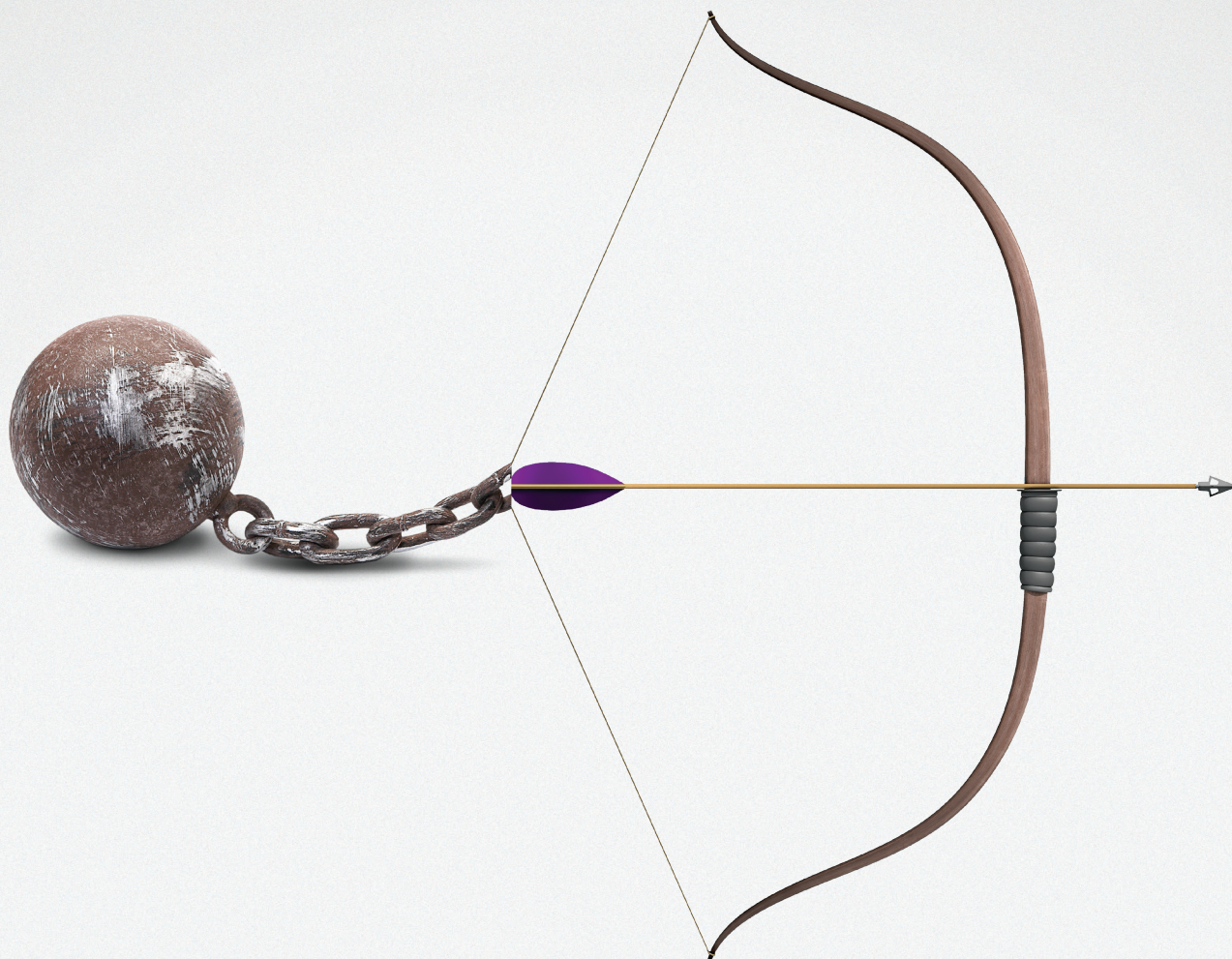


Primarily, because the legitimacy case law has repeatedly highlighted that the explanatory report is not relevant since each law must be interpreted according to its objective content, while preparatory activities are not decisive for its interpretation. Secondly, because the Court of Cassation clarified that disputes concerning tax bills taxes indicated by the taxpayer in the tax return can be settled without any correction made by the office, since such tax bills represent the first deed received containing the claim and, therefore, they can be qualified as “enforceable”.

The second aspect concerns the impossibility to settle disputes by offsetting amounts due in F24 forms. Though this provision can be justified, in relation to “rottamazione quater”, by the material impossibility to promptly verify whether the credit to be offset is authentic and existing, as concerns the settlement of pending litigation – where Revenue Office is in the front line in checking the regular settlement and notifying any refusal – this need appears less binding and, considering the current socio-economic context, the adoption of a less restrictive regulation would have been desirable.

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