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March 2021

# Development drivers not related to moratoriums

## Expert's Opinion

### *Allowances to promote and support innovation*

***Federico Feroci***,
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*in collaboration with* ***Marco Pane***

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## Overview

### *Emergency situation and support measures to companies*

***Marco Pane***
*Manager Bernoni Grant Thornton*

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## Focus on

### *Suspension of fixed assets depreciation*

***Alessandro Grassetto***
*Partner di Bernoni Grant Thornton*

Within the many provisions issued to deal with the crisis generated by the COVID-19 pandemic to companies, the Italian legislator also dealt with the impacts of the crisis on the recording of financial statements values (e.g. the worsening of economic and financial ratings, or the incidence on shareholders' equity losses). The "Rilancio" Decree (conversion law no. 77/2020) already introduced a mechanism for the...

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# Overview

## *Emergency situation and support measures to companies*

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The emergency situation required, and still requires, the government and institutions a considerable effort to ensure an economic and financial support for struggling companies. Support measures for businesses can be divided into: measures for liquidity; measures for increase of corporate equity; and non-repayable allowances for those who suffered a decrease in turnover.

These refer to emergency provisions issued between March and November2020, i.e.:

- *Cura Italia* Decree (Law Decree dated 17 March 2020, no. 18, turned into Law dated 24 April 2020, no. 27)
- Liquidity Decree (Law Decree dated 8 April 2020, no. 23, turned into Law dated 5 June 2020, no. 40);
- *Rilancio* Decree (Law Decree dated 19 May 2020, no. 34, turned into Law dated 17 July 2020, no. 77);
- AugustnDecree (Law Decree dated 14 August 2020, turned into Law dated 13 October 2020, no. 126);
- in addition to four so-called *Ristori* decrees issued over last autumn.

Budget Law 2021 (Law n. 178/2020) also extended some emergency measures up to 30 June 2021, due to the extension of the European Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak. In fact, on 29 January 2021, the European Commission extended the temporary framework up to next 31 December, increasing its ceilings.

In fact, considering the persisting economic uncertainty and the strict domestic measures introduced to limit the spread of the virus, the European Commission decided to increase the ceilings provided by the temporary framework as follows:

- 225 thousand Euro for companies operating in the primary production of agricultural products (formerly: 100 thousand)
- 270 thousand Euro for companies operating in the fisheries and aquacultural sectors (formerly: 120 thousand)
- 1.8 million Euro for companies operating in all other sectors (formerly: 800 thousand Euro).

As provided in past years, these aids can be combined with "de minimis" aids up to 200 thousand Euro per company – up to 30 thousand Euro for companies operating in the fisheries and aquacultural sectors and up to 25 thousand for companies operating in the agricultural sector – over three fiscal years.

Those companies that have been particularly impacted by the Covid-19 crisis and suffered a decrease in turnover equal to at least 30% compared to 2019, can receive a State contribution to cover part of fixed costs that are not offset by revenues, of an amount equal to up to 10 million Euro per company (previously such limit was equal to 3 million).

Moreover, up to 31 December 2022, Member states can turn the repayable allowances granted – including loans – into direct grants, even in a later phase: the aim is to incentivize States to choose a repayable allowance as their first aid option.

Therefore, over the last year, a considerable number of regulations have been introduced to prevent and limit the negative effects on the economic system.

To date, the government is working to issue a new economic decree (*Sostegno* or *Ristori-quinques* Decree), aimed to support the most struggling economic sectors, given the persisting limitations to the performance of working activities.

The abovementioned regulations introduced many measures having a more or less immediate effect, in order to support production activities in different ways. For example, the *Rilancio* Decree introduced the clearance of IRAP 2019 settlement payment and of IRAP 2020 first instalment (art. 24 of Law Decree no. 34/2020).

This measures, which certainly helped those companies that registered a positive IRAP taxable income in 2019, did not however produce those benefits for most struggling taxpayers which were already in a difficult situation before the pandemic and therefore already had a reduced or null profitability in 2019. Substantially, the provision determined for companies an economic-financial benefit that is proportional to income generated in 2019.

Many regulations also substantially proposed a postponement of the deadlines for some payments due for 2020 to 16 March or 30 April 2021. Such postponements, however, do not have the required characteristics to be considered as development drivers, since they are only postponements of payments that will in any case be due by taxpayers.

Then, other measures tried to support companies' liquidity both by granting some non-repayable contributions, proportioned to the loss in turnover suffered due to the pandemic emergency, and by favouring access to credit through the concession of different guarantees or other favourable measures. There are also some examples of hybrid favourable measures, such as the granting of favourable loans (already existing before the pandemic) combined with a non-repayable component. This is the case, for example, of loans managed by Sace - Simest company of Cassa e Depositi e Prestiti group aimed to favour internationalization (so-called 394/81 fund).

Such loans, which are granted at a favourable interest loan equal to one tenth of the *Rendistato* rate and including a non-repayable amount equal to up to 50% of the financed amount, are aimed at investing in the international development of Italian SMEs and MidCap companies, by supporting the increase of their equity, their participation in international fairs, their entry into foreign markets, the hiring of professional figures being highly skilled in internationalization processes, as well as the training of their personnel, the development of platforms and marketplace for the promotion of their products, and lastly the feasibility studies to assess the entrance in new markets.

These measures, which are certainly much efficient for the international development of Italian companies (and much expensive for the State), were a great success and the allocated resources were exhausted in a very short time (the available period to file loan applications was already closed by Simest half October 2020). Budget Law 2021 considerably re-funded the abovementioned 394/81 fund for internationalization, in order to deal with applications filed up to October 2020. Further funds are expected to be created for 2021.

In order to face the undercapitalization that has always affected Italian companies, art. 26 of *Rilancio* Decree introduced the creation of the so-called *Fondo Patrimonio PMI* (SME heritage fund), aimed to support and relaunch the Italian economic and production system through the co-investment by the State in the capital of middle-size companies (companies with revenues between 5 and 50 million Euro), which suffered a decrease in turnover in March and April 2020 by at least 33% compared to the same period in 2019 and which resolved, and executed, on a capital increase between 19 May 2020 and 30 June 2021. In particular, the government grants a tax credit equal to 20% of subscribed capital to those subjects who made a capital contribution in cash (within the limit of 2 million Euros) and a concurring tax credit equal to 50% of losses exceeding 10% of equity, calculated before the losses themselves, up to 30% of the capital increase.

Besides tax credit, para. 12 of the same article introduced – with the creation of the abovementioned SME heritage fund – introduced the possibility to subscribe by 31 December 2020 subordinated bonds or securities issued by companies with revenues between 10 and 50 million Euros and a number of employees lower than 250, and who resolved on a capital increase – by 30 June 2021 – equal to at least 250.000 Euro.

Through this form of co-investment, the State undertakes to subscribe a subordinate debt issued by the company for a maximum amount equal to the lower value between three times as much the private capital increase and 12,5% of 2019 turnover, without any evaluation of the creditworthiness and with a remuneration at a favourable rate. The main benefits expected from this measure are, among others: the strengthening of the capital structure of SMEs thanks to the contribution of private capital and to the leverage effect of the State loan; the immediately available liquidity for companies; and an easier access to bank loans. With reference to larger companies, with a turnover higher than 50 million Euro, art. 27 of *Rilancio* Decree created the so-called *Patrimonio Destinato* public fund, managed directly by *Cassa Depositi e Prestiti*. The fund, with allocated resources equal to 44 billion Euro, can operate in two ways. Firstly, within the Temporary Framework, the fund can finance companies within September 2021 through capital increases or subscription of convertible or non-convertible bonds by contributing liquidity between 1 and 100 million Euro; then, the fund can operate for 12 years within the market in favour of companies of national interest – due to their activity industry or to their dimensional or occupational relevance

– whose economic/financial situation could undermine the going concern (if it di not already arise before 31 December 2019).

A further category of measures introduced by the Government are those aimed to support investment and favour research, the innovation and the development of Italian enterprises. Among the most interesting measures introduced, amended or strengthened during this emergency period, there are:

- Revaluation of corporate assets re-introduced by August Decree and extended to intangible assets by Budget Law 2021
- Tax credit for R&D activities 2021, strengthened compared to the measure introduced by Budget Law 2021 for last year
- Optional Patent Box regime to support investment in intangible assets relevant to patents and know-how.

The ***Expert's Opinion*** of this TopHic issue analyses the cross effects deriving from the combined application of the above measures as development drivers.

The ***Focus on*** article analyses the suspension of depreciations for FY 2020, a measure which, together with the revaluation of capital goods, aims to ease the financial and economic situation of companies that are suffering a considerable decrease in revenues due to the emergency period.

## Expert's Opinion

### *Allowances to promote and support innovation*

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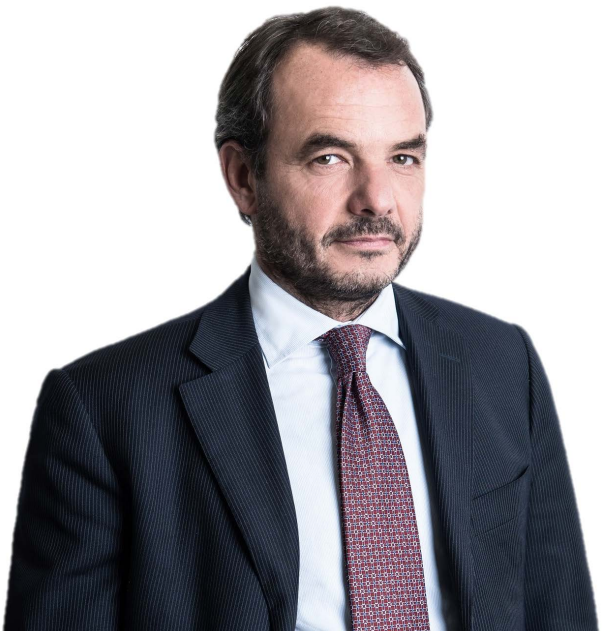

The many tax measures introduced over time to promote and support innovation offer some interesting opportunities to finance development projects and, more generally, to enhance companies' intangible assets.

Following the regulation on revaluation of corporate assets and the recently published response by the Lombardy revenue head office to ruling no. 904 – 20406/2020, concerning the possibility to revaluate those fixed assets that have never been recorded in the financial statements, it is advisable to evaluate the possible effect deriving from the combined utilization of the allowances provided by the so-called patent box, by the regulation on revaluation of corporate assets under art. 110 of Law Decree no. 104/2020, and by the regulation on the tax credit for R&D activities under Law no. 190/2014.

Below is a synthesis of the main characteristics of each of the abovementioned allowances.

#### *Patent Box*

This is an "*optional taxation regime concerning corporate income deriving from the use of copyrighted software, industrial patents, designs and models, as well as processes, formulas, and information relevant to industrial, commercial, or scientific experience acquired, being legally protectable*".

Due to the amendments of the existing regulations (particularly those under art. 4 of Law Decree no. 34/2019 and under the Order by the Director of the Revenue Office no. 658445/2019), circular letter dated 29.10.2020, no. 28/E of the Revenue Office provided some clarifications on the procedure to benefit from the allowance, with reference to the option for the direct definition of eligible income. The option must be exercised in the tax return relevant to the FY which the option applies to and is valid for five fiscal years, as well as irrevocable and renewable.

The allowance consists in the possibility to exclude from the taxable income 50% of revenues deriving from the (even joint) use of specific intangible assets or from their sale – if 90% of the relevant consideration is re-invested in the maintenance or development of other intangible assets before the end of the second fiscal year following that in which the sale occurred.

### Revaluation of corporate assets

Art. 1, para. 83, section I of Budget Law 2021 extends the possibility to apply the revaluation of corporate assets to goodwill and to other intangible assets resulting in the financial statements being current at 31 December 2019 (this possibility is also granted to subjects whose fiscal year does not correspond to the solar year – as provided by the response to the Revenue Office ruling no. 640 dated 31 December 2020).

Specifically, by providing that the revaluation also applies to goodwill and to other intangible assets resulting in the financial statements being current at 31 December 2019, any kind of intangible assets registered in the financial statements is subject to tax realignments.

The higher value attributed to assets can be recognised for income taxes and IRAP purposes starting from the FY following that which the revaluation refers to, by paying a substitute tax equal to 3% for depreciable and non-depreciable assets.

With specific reference to the revaluation of intangibles, it is pointed out that in circular letter no. 6 dated 5 March 2021, Assonime (association of Italian joint-stock companies) commented the regulation on revaluation and, in particular, the abovementioned recent response by the Lombardy revenue head office to the ruling, requesting a reply on the possible revaluation of intangible assets not recorded among financial statements assets.

According to Assonime, in fact, there are some good reasons to allow the application of the revaluation not only to registered – and, therefore, legally protected – intangible assets (case examined by the Lombardy revenue head office), but also to non-registered intangibles having, therefore, a lower protection (such as "de facto trademarks", used to distinguish products and services if registration lacks).

### R&D tax credit

R&D tax credit has been effective since 2015 and it was reviewed in following Budget Laws. It supports businesses with their industrial research and experimental development investment, aimed to product or process innovation to ensure competitivity. New allowance rates were introduced in 2020 for technology innovation, design, and aesthetic invention costs.

The tax credit can be offset into three equal annual instalments, starting from the FY following that in which the credit accrues.

The above being said, the response by the Lombardy revenue head office to the ruling offers some interesting hints on the joint effects of the three abovementioned allowances, since the analysed case concerns a company dealing with the production of hydraulic pumps, holding corporate information and technical-industrial information, including commercial or scientific knowledge that can be protected as secret information, being legally protectable, consisting in "construction and production designs" relevant to the produced machines (so-called know-how).

Moreover, the abovementioned company filed an application for the so-called Patent Box regime and obtained it from the Revenue Office for the five-year period 2016-2020 and the confirmation that the know-how in the specific case has an actual economic value.

The specific question asked to the Revenue Office was: can intangible assets that have never been registered among financial statements items and that were only entered as costs in the income statement be revaluated based on the fact that such assets are legally protected according to the relevant regulation? And the Revenue Office answer was yes.

Synergies between Patent Box, revaluation, and R&D tax credit

The above response to the ruling suggests that, if a company holds a patent concerning continuous research and innovation, it is entitled, besides to the tax credit provided under Law 190/2014, also to the partial deduction from taxes of revenues deriving from the use of such patent and to the revaluation of the asset, adjusting its registration cost in the financial statements, recognising the higher registered values for tax purposes, and possibly deducting the higher depreciations during the patent's useful life.

To this regard, however, it must be pointed out that a comprehensive evaluation of the different applicable favourable regimes is necessary, since the higher depreciations related to the revaluation of intangibles could impact the calculation of the Patent Box allowance when defining the profitability of the concerned intangible under the application of the residual profit split method.

Nonetheless, if an agreement for the application of the Patent Box regime has already been signed with the Revenue Office (article 1, para. 37-45, of Law no. 190/2014 and Ministerial Decree dated 28 November 2017), such circumstance could concretely be favourable for the purposes of the definition of the actual economic contribution of some kinds of intangibles. In fact, the ruling agreement could provide some elements to quantify the economic contribution of those non-registered intangible assets, which could create a synergy with the substantial legal protection requirement – as the essential condition to ensure the actual presence of these assets among the company's total assets.

On the other hand, if the company has not yet benefitted from the Patent Box regime, the analyses to be carried out to identify the concerned intangible would be useful for the application of both the revaluation and the tax credit under Law 190/2014, thus with a joint initial organizational and evaluative effort.

Art. 1, para. 204 of Budget Law 2020 (Law dated 27 December 2019 no. 160), provides that the R&D tax credit can be combined wth other allowances referring to the same costs, as long as this combination does not lead to a higher value than the cost borne – also considering the exemption from taxation for IRAP purposes.

Limits and need for an expert's opinion for an exact assessment of the intangible asset

Once the possible cross-effects of the abovementioned measures are defined, it is then important to consider how to proceed to jointly benefit from such measures, avoiding any objections by the Tax Authorities.

First of all, it is pointed out that the combined provisions under articles 10 and 11 of Law no. 342 of 2000 and under art. 110 of Law Decree no. 104/2020 requires, for the purposes of the revaluation of intangible assets that are not registered among balance sheet assets but whose existence can be inferred from the financial statements, that the concerned intangible assets be in any case recordable among balance sheet assets, according to the ordinary rules provided under national and international accounting standards.

Therefore, if there are the conditions for the potential registration of intangibles pursuant to the indications provided under the accounting standards, particularly OIC accounting standard no. 24 and IAS no. 38, and of the actual incurrence and quantification of the related cost, the revaluation of the concerned intangibles cannot be prohibited nor denied.

It must be noted that an asset can be independently identified when it can be separated from the rest of the business (i.e. if it can be sold separately as independent asset), when it is "controlled" by the business due to the law provisions that protect the legal property of the intangible, and when such intangible right can certainly generate future economic benefits for the company that holds it.

In addition, when there is evidence of the actual incurrence of a cost for the purchase of such right – and, subsequently, an "exchange" with third parties – and of the reliable quantification of the cost incurred for the purchase of the right – documented through a proper expert's assessment, the right to revaluation cannot be denied.

The opportunity to obtain an expert's assessment and the considerations on the actual possibility to separate an intangible are also valid also in case of application of the Patent Box regime and of utilization of the R&D tax credit, specifically in the current emergency situation, where the actual recoverable value of intangible assets must be rigorously evaluated when preparing the financial statements.

Some practical cases

In the light of the above, this section analyses some concrete practical applications of the above-described principles, focusing on the case of companies operating in the pret-à-porter fashion industry which internally developed different trademarks.

It often happens that trademarks can have a considerable value, despite the fact that such brands were developed internally and that such companies incurred quite low costs to obtain them, which are generally related to brand registration costs accounted based on the historical cost method and, generally, totally depreciated.

*Therefore, are the new regulations on revaluation, Patent Box, and R&D tax credit also applicable to such cases?*

Although the new regulations on revaluation described above expressly refer to the possibility to revaluate intangible assets, even if totally depreciated, it must be pointed out that in these cases there would be the prohibition to enter such assets in the balance sheet, even after revaluating them.

In fact, the prohibition to enter such self-developed intangibles in the balance sheet is due to the fact that they are not related to the incurrence of an actual cost, or, in other words, that the acquisition of such assets – which should imply the registration in the balance sheet – is not linked to an exchange in the market (i.e. an exchange with third parties, even through M&A operations), which could recognise the value of the asset as "autonomous entity". Therefore and in compliance with accounting standards, the self-developed trademark and patents could not be separated from the goodwill internally generated by the company.

With specific reference to the case of self-developed trademarks and to the application of the Patent Box regime, it is specified that, although the trademarks allowed many companies to realize considerable tax advantages in the first five years, the Patent Box now cannot be further replicated following the exclusion provided for these assets under Law Decree 50/2017, which aligned the Italian regulation to OECD provisions. In any case, on the other hand, all information collected in the discussion with the Tax Authorities for the determination of the value of the intangible asset could be legitimately be taken into account to benefit from the revaluation.

Lastly, with regard to the R&D tax credit, depreciation charges relevant to intangible assets are considered – in compliance with the conditions and limits provided by the reference regulation – within the maximum limit of the amount deducted from taxes in the fiscal year concerned by the benefit. However, it must be specified that costs for the purchase – even under a license agreement – of such intangibles deriving from transactions carried out with companies belonging to the same group cannot be relevant for the purposes of the benefit.

With response to ruling no. 86 dated 27.3.2019, amending response no. 73 dated 13.3.2019, the Revenue Office clarified that while the cost of the patent is taken into account for the definition of the incremental cost proportionally to the use of the same in the performance of eligible activities, the trademark does not meet the "industrial invention" requirement, as it is just a sign that allows distinguishing products or services realized or distributed by a company from those of other companies. Therefore, the relevant cost cannot be considered for the definition of the benefit.

## Conclusions

The R&D tax credit, the Patent Box regime and the possibility to revaluate corporate assets – including intangible assets – are generally benefits that can be combined and used at the same time.

Nevertheless, in order to avoid any objection by the Tax Authorities, it is important to ensure the existence of the law requirements to obtain such benefits, as well as – if possible – to provide the proper supporting documentation.

The preventive analysis of interrelations between these three benefits in each specific practical case is also crucial, in order to benefit from all synergies and to avoid that the positive impact of one benefit could be reduced or nullified by the concurring utilization of other allowances.

## Focus on

### *Suspension of fixed assets depreciation*

***Alessandro Grassetto***
*Partner Bernoni Grant Thornton*

Within the many provisions issued to deal with the crisis generated by the COVID-19 pandemic to companies, the Italian legislator also dealt with the impacts of the crisis on the recording of financial statements values (e.g. the worsening of economic and financial ratings, or the incidence on shareholders' equity losses).

The *Rilancio* Decree (conversion law no. 77/2020) already introduced a mechanism for the evaluation of the going concern with regard to financial statements values in order to avoid that the application of ordinary accounting criteria for the preparation of the financial statements could lead to the termination of a company's activity in the exceptional context of the Covid-19 crisis.

The August Decree dated 14 August 2020, no. 104, as amended by its conversion law dated 13 October 2020, no. 126, again assuming that the exceptional current period could not be correctly interpreted under the ordinary financial statements preparation rules, introduced two measures aimed at mitigating the negative effects in the financial statements, i.e.: the extraordinary revaluation of tangible and intangible assets and of company's shareholdings (art.110) – analysed in one of our ***Clever Desk Alerts*** – and the suspension of the depreciation of tangible and intangible fixed assets (art. 60, para- 7-bis to 7-quinquies).

This article analyses the latter measure, also in consideration of the clarifications provided in Assonime circular letter no. 2 dated 11 February 2021 and of the opinion expressed by the Italian accounting standard setter in its draft interpretation document (OIC interpretation document no. 9), which examined the many issues that are still under discussion concerning this exceptional provision.

With reference to the suspension of depreciations, conversion law no. 126/2020 introduced under art. 60 of the August Decree, the abovementioned paragraphs 7-bis to 7-quinquies, providing that non-IAS adopters can suspend up to 100% of the depreciation of the annual cost of tangible and intangible assets. In this way, the suspended depreciation charge will be imputed to the income statement of the following fiscal year, thus extending the depreciation plan by one year. Subjects benefitting from this suspension must allocate to a restricted reserve profits whose amount is equal to the suspended depreciation charge, while the explanatory notes must contain an explanation of the reasons underlying this suspension, the allocation of the reserve and its impact on the representation of the assets and financial situation as well as of the result for the year. This regulation, which certainly generates some doubts from an accounting perspective – considering that companies are given the possibility to exclude from the financial statements a cost that is pertaining to the FY – represents an additional possibility compared to that already provided under art. 2426 of the Italian Civil Code, allowing the amendment of depreciation criteria and of applied coefficients, to be explained and justified in the explanatory notes.

## 1. Scope of application

As mentioned above, the regulation under analysis concerns all companies that do not apply international accounting standards. Therefore, these include companies that prepare their financial statements under OIC accounting standards, non-IFRS adopting intermediaries applying the rules under legislative decree no. 136/2015 and insurance companies that do not adopt international accounting standards.

According to Assonime, the regulation also concerns those companies classified as "micro-enterprises" pursuant to art. 2435-ter of the Italian Civil Code – which apply a simplified scheme for the preparation of financial statements, which does not provide the explanatory notes – due to the fact that the information requirements for such companies can be shown at the end of the balance sheet.

The regulation expressly provides that the possibility to suspend depreciations is applicable to the FY being current at the effective date of the decree, i.e. to fiscal years being current at 15 August 2020 (e.g. financial statements at 31 December 2020). Considering the evolution of the economic situation due to the Covid-19 pandemic, the legislator also provides the possibility to extend this measures also to following FYs through the issue of a proper Decree by the Ministry of Economy and Finance.

A particular consideration is needed with regard to consolidated financial statements.

In fact, the following situations can occur: all companies included in the consolidation benefitted from the suspension; only the consolidating company benefitted from the suspension; some or all of the consolidated companies benefitted from the suspension.

To this regard, reference is made to OIC interpretation document no. 9, according to which the possibility to suspend depreciations could apply also to companies preparing the consolidated financial statements in compliance with Legislative Decree no. 127/1991. In particular, it specifies that the provision apply to the consolidated financial statements of the ultimate parent company, also in case it did not benefit from the suspension in its own financial statements.

In such a situation, the consolidated financial statements includes the effects of the suspension only with reference to the consolidated companies which benefitted from the suspension. The suspension allows the application of non-homogeneous evaluation criteria. In practical terms, when preparing the consolidated financial statements, add-backs of values of the single consolidated companies can be made as they are shown in their respective financial statements, thus without making any adjustment to unify evaluation criteria.

With regard to concerned assets, the provision, in general terms, applies to tangible and intangible assets, including goodwill, meant as that share of the acquisition cost of a company or of a business unit, which cannot be attributed to single assets. Although it is not represented by a legally protected asset – despite being an intangible asset – according to Assonime, goodwill should certainly be concerned by the provision under analysis.

Start-up and development costs must be considered in a similar way.
Moreover, being this a general favourable regulation, the suspension concerns also goods acquired in the FY whose paid amount is recovered at the end of the depreciation plan rather than in the following FY.

OIC interpretation document no. 9 also discusses whether the suspension of depreciations must necessarily concern whole classes of intangibles or it can applied also to single assets.

Considered that the suspension is based on different types of justifications, which can also concern single assets, it should be possible to apply the suspension to single assets, to groups of assets or to the whole category. The only warning is that the choice of the eligible assets must be consistent with the reasons that led the company to suspend depreciations.

### 2. Application procedure of the depreciation suspension

Art. 2426, para. 1, n.2) of the Italian Civil Code provides that the cost of tangible and intangible assets, whose use is limited in time, must be systematically depreciated in any fiscal year based on their residual possibility of use.

Compared to the above article, art. 60, para. 7-bis to 7-quater of the August Decree introduced the suspension of depreciations and the extension of the original depreciation plan by one year.

The rule provides that the company can suspend up to 100% of the annual depreciation of the assets cost, maintaining the registration value as it results from the last duly approved financial statements.

Considering the above, the suspension of the depreciation must not necessarily be total, but rather it can be a reduction of the annual charge provided by the original depreciation plan also by a percentage lower than 100%.

A particular consideration must be made on the criterion used to suspend the depreciation of assets (the company must explain in the notes the reasons underlying the choice to apply the suspension of depreciations).
In fact, the suspension of depreciations can be justified in all cases where single assets or categories of assets are not used or are less used, but also when it derives, more generally, from the negative economic effects of the Covid-19 pandemic.

### 3. Extension of the depreciation plan

The regulation provides that the suspended depreciation is entered in the income statements of the following FY. The depreciation charges of following FYs are postponed following the same criterion, thus extending the original depreciation plan by one year.

If the lower depreciation is not associated with an extension of the asset useful life due to, for example, contractual or technical obligations, the extension of the depreciation plan by one year cannot be considered as an automatic effect of the application of the suspension under analysis, but it rather derives from the concrete evaluation of the actual extension of the concerned asset operated by the company compared to the original depreciation plan.

### 4. Restricted reserve

Those companies benefitting from the suspension under analysis and suspends, for the current FY, the annual depreciation of the cost of fixed assets, must allocate – when approving the financial statements relevant to the FY being current at 15 August 2020 – profits corresponding to the suspended depreciation charge to a restricted reserve. If FY profits are lower than the depreciation charge, such reserve is integrated with available reserves. If there are no reserves, the restricted reserve is integrated by allocating profits of following FYs.

This reserve is classified as restricted reserve that cannot be distributed to shareholders nor allocated as capital; it can be used however to cover losses.

The regulation does not indicate how to release the restricted reserve. It is therefore assumed that, if the depreciation period is extended by one year, the reserve will be available at the end of the depreciation period. On the other hand, if the depreciation period remains unchanged (and the suspended depreciation charge is distributed among the residual useful life), it will be gradually released in the FYs, depending on the higher depreciation charge attributed. It can also be assumed that the reserve can be released in case of sale or write-down of the concerned fixed asset.

## 5. Explanatory notes

As mentioned above, the Explanatory Notes relevant to the FY being current at 15 August 2020 must include an explanation of the reasons underlying the choice to apply the suspension of depreciations and indicate the concerned assets and the amount of suspended depreciations, as well as the economic and financial impact of the suspension.

Assonime comments that the explanatory notes should specify that the suspension was applied and include a brief explanation of the reasons underlying this choice. Apparently, an analytical explanation of such reasons is not necessary.

As concerns the economic and financial impact of the suspension, an explanation of the different amount in the balance sheet and in the income statement should be provided, if the depreciation suspension is not applied.

## 6. Tax regulation

Art. 60, para. 7-quinquies of Law Decree n. 104 of 2020 states that the depreciation rates suspended for accounting purposes can be deducted for tax purposes, within the limits provided by the IRES and IRAP regulation, regardless of their imputation in the income statement.

According to *Assonime*, this is not an optional regime from a tax perspective. While the possibility to choose whether to apply the suspension of depreciation or not is granted for accounting purposes, the same is not valid from a tax perspective.

The Revenue Office expressed its point of view during Telefisco 2021 event. On this occasion, it was asked whether the deduction of suspended depreciations was mandatory or optional and the Revenue Office answered that the regulation connects from a tax perspective the suspension option granted at accounting level, providing that the non-imputation of the depreciation charge in 2020 income statement does not impact on its tax deductibility, which is in any case confirmed.

Therefore, the mandatory tax deduction of depreciation charges relevant to 2020 creates a misalignment between the accounting and the tax value of assets, thus requiring the allocation of deferred tax liabilities, i.e. of taxes corresponding to the suspended accounting depreciation charge that will have to be taxed in the future, when it will be entered in the income statement.

Given the above, the benefit deriving from the suspension of depreciation charges on the 2020 financial statements will be equal to the amount of suspended charges net of deferred tax liabilities allocated in the financial statements.

Moreover, this approach could also impact the amount of the restricted reserve to be allocated due to the suspension of depreciations. Although art. 60, para. 7 ter, provides that the amount of this reserve must correspond to the amount of the suspended depreciation charge, it is clear that profits to be allocated to this reserve must be compared, rather than to the gross amount of suspended depreciations, to the amount of depreciation net of the corresponding deferred tax liabilities.

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