Executive summary

The Italian budget law for 2016, Law n. 208 of 28 December 2015 (the Law), was published in the Official Gazette n. 302 of 30 December 2015. The most relevant tax measures contained in the Law relate to:

- Introduction of Country by Country Reporting for multinational entities
- Repeal of the limitations on the deductibility of costs incurred for the purchase of goods and services from black list entities
- Repeal of the existing black list relevant for the application of the Controlled Foreign Companies (CFC) regime
- Change of statute of limitations rules
- Reduction of the corporate tax rate by 3.5 percentage points (i.e., from 27.5% to 24%) starting as of fiscal year 2017
- Extra-depreciation of 40% for certain tangible assets purchased between 15 October 2015 and 31 December 2016
- Acceleration of the amortization period of stepped-up intangible assets including goodwill
- Corporate tax incentive for the sale or assignment of real estate and registered movable property to shareholders
- One-off opportunity for nonresident companies to step up Italian participations
- One-off asset step up
Detailed discussion

Country by Country Reporting for multinational entities

The Law introduces a new Country by Country Reporting (CbCR) obligation for multinational entities to submit an annual report indicating the amounts of revenues, gross profit, taxes paid and accrued, and other indicators of effective economic activities.

Further rules regulating the detailed procedural aspects (among others, the filing date) will be issued by the Ministry of Economy and Finance within 90 days as of the date of entrance into force of the Law (1 January 2016).

Taxpayers obliged to the CbCR are:

- Italian parent companies of groups which (1) are required to submit group consolidated financial statements; (2) have realized a consolidated annual turnover in the year prior to the CbCR of at least €750 million; and (3) are not controlled by any other entities.

- Italian resident companies, controlled by a foreign company, which are required to submit group consolidated financial statements in a country where the CbCR does not apply, or in a country which does not grant an actual exchange of information on the CbCR.

In the case of omission or incomplete submission of the CbCR, penalties apply from €10,000 to €50,000.

Repeal of the limitations on the deductibility of black list costs

Under current rules, as recently modified by Legislative Decree n. 147 of 2015, costs actually incurred for the purchase of goods and services from black list entities may be deducted up to the limit of the relevant fair market value. The deduction of any exceeding value is subject to the demonstration that the transaction at stake responds to an actual business interest and that the transaction has been carried out.

The Law repeals these rules as of FY 2016.

Change of statute of limitations rules

The Law changes the terms of the statute of limitation rules. Pursuant to the new provisions, a company could be subject to a tax assessment up to the end of the fifth year following the year of filing of the relevant tax return (instead of the previous term of the fourth year following the year of the filing of the tax return).

The statute of limitation is extended to seven years in the case of failure to file any tax return (instead of the term of five years provided by the old provisions).

The Law also repeals the doubling of statute of limitations in case of criminal tax investigations.

The new rules will apply to the tax assessments issued with reference to FY2016 and the subsequent years.

Reduction of the corporate tax rate

For FY 2017 onwards, the Law provides a reduction of the applicable corporate income tax (IRES) rate from 27.5% to 24%. The rate for banks and other financial entities will however still be 27.5%.

The current 1.375% withholding tax applicable to dividends paid to white list EU/EEA resident companies will be reduced to 1.20% for FY 2017 onwards.

Extra-amortization of certain tangible assets

The Law introduces a 40% extra-amortization (i.e., up to a total of 140% tax amortization) for tangible assets whose amortization rate for tax purposes exceeds 6.5%. In order to qualify for the measure, the assets have to be purchased or
rented under a financial leasing contract during the period of 15 October 2015 to 31 December 2016. Real estate assets, pipelines, rolling stock and airplanes are excluded from the measure.

This new tax measure does not affect the calculation of the advanced payments due for the FY 2015.

**Acceleration of amortization period of stepped-up intangible assets**

Higher accounting value derived from tax neutral corporate reorganizations (e.g., mergers, demergers or contributions of a going concern) attributable to tangible and intangible assets are generally not recognized for corporate income tax (IRES) and regional tax (IRAP) purposes. However, Article 15, paragraph 10, of decree n. 185/2008 provides the possibility to align the relevant tax bases to the higher accounting values of trademarks, goodwill and other intangibles by paying a 16% substitute tax. Currently, intangibles are subject to different amortization periods. Goodwill and trademarks may be amortized over 18 years, while certain other intangibles may theoretically be written off over a two year period. The step-up requires an upfront payment of a 16% tax and allows tax amortization (for both IRES and IRAP) of goodwill/trademarks over a period of 10 years after the one-time payment (instead of 18 years).

The Law modifies the decree 185/2008 by reducing the amortization period for goodwill and trademarks from 10 to 5 years. The new rule applies to reorganizations carried out as of FY 2016.

**Corporate tax incentive for sales or assignments of real estate and registered movable property to shareholders**

The Law renews the possibility for certain companies and partnerships to benefit from more favorable tax rules, either in the case of attribution or disposal of real estate and registered movable property (e.g., cars) to the shareholders, or in the case of transformation into a simple partnership (Società Semplice). The eligible transactions indicated by the draft budget shall be executed no later than 30 September 2016, and the shareholders shall result from the corresponding Register (if required) at 30 September 2015.

The more beneficial tax regime applies to “dormant companies” as well as to “non-dormant companies.” An 8% (instead of IRES and IRAP ordinary overall tax rate of 31.4%) substitute tax applies (10.5% in the case of “dormant companies”) on the difference between the cost recognized for tax purposes and the fair market value related to the assets. A company’s deferred tax reserves (riserve in sospensione d’imposta), if any, eliminated as a result of the said transactions, are subject to a 13% substitute tax. In the case that the Registration Tax applies to the transactions, the corresponding rates are reduced by 50%, while Mortgage and Cadastral Taxes are applied on a lump sum basis.

The measure applies to General Partnerships (Società in Nome Collettivo, S.N.C.) and to Limited Partnerships (Società in Accomandita Semplice S.A.S.), as well as to Joint-stock Companies (Società per Azioni, S.P.A.), Limited Liability Companies (Società a Responsabilità Limitata, S.R.L.), and Partnerships Limited by Shares (Società in Accomandita per Azioni, S.A.P.A.).

**One-off opportunity for nonresident companies to step up Italian participations**

The Law revamps the special one-off opportunity for nonresident entities to elect a tax step up of participations in unlisted Italian companies held at least from 1 January 2016 through the payment of a substitute tax.

The provision may be of specific interest to foreign entities which could realize a capital gain subject to tax in Italy and not be eligible for exemption under an applicable treaty. The rates of the substitute tax are equivalent to 4% for non-qualified participations and 8% for qualified participations. The basis of the substitute tax is represented by the value of the participation as of 1 January 2016 and needs to be certified by a sworn appraisal prepared no later than 30 June 2016.

The substitute tax may be either paid in full by 30 June 2016 or through three annual installments beginning 30 June 2016.

**One-off asset step up**

The Law also revamps a one-off opportunity for Italian companies to step up business assets for accounting and tax purposes for the period in course on 31 December 2015. This rule differentiates from the existing asset step up rules as it does not require a corporate reorganization (e.g., merger, contribution of assets) as a prerequisite for the step up election.

The election may apply to tangible and intangible assets (except for immovable properties held by real estate trading companies) as well as to qualifying shareholdings, provided that the mentioned assets are included in the balance sheet related to the period in course on 31 December 2014.
Under the proposed regime, companies can pick and choose the category of assets to be stepped-up through the payment of a substitute tax amounting to 16% for amortizable/depreciable assets and 12% for non-amortizable/non-depreciable assets. The substitute tax payment results in a higher tax base allowing depreciation/amortization at a 31.4% rate or a lower taxable gain in the case of disposal of the assets.

Tax recognition of the new values for depreciation and amortization purposes occurs starting from the third fiscal year following the one in which the step up was made (e.g., from 1 January 2018 for calendar year companies). Tax recognition for capital gain purposes occurs starting from the fourth year following the one in which the step up was made (e.g., from 1 January 2019 for calendar year companies).

The equity reserve created as a consequence of the accounting step up can be freely distributed provided that a 10% substitute tax is paid.

Italian companies reporting under International Financial Reporting Standards (IFRS) are not eligible to make the election for the above step up.

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Endnotes

2. Under the Italian legislation, companies who exceed two of the following thresholds for two consecutive years: i) total assets of €20 million, ii) turnover of €40 million, or iii) 250 employees, are obliged to draw up consolidated financial statements.
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