Executive summary

On 23 December 2017, the Italian Parliament approved the 2018 Budget Law (the Law) which is expected to be published in the Official Gazette by the end of the year and will enter into force on 1 January 2018. The most relevant tax measures contained in the Law relate to:

- Extension of extra-amortization on certain tangible and intangible assets
- Tax credit for training expenses related to the Industry 4.0 development plan
- Corporate tax rate provisions for securities companies
- Changes to the Registration Tax regime
- Tax credit for advisory expenses related to the Small and Medium Enterprises (SME) listing
- Changes to the interest expense rules
- One-off asset step up provisions
- Tax regime of income from capital and miscellaneous income arising from disposal of qualifying participations realized by individuals, acting as non-entrepreneurs
Detailed discussion

Extension of extra-amortization of certain tangible and intangible assets

The Law extends the extra-amortization\(^1\) regime for entities investing in new assets in the period between 1 January 2018 and 31 December 2018 (or 30 June 2019, provided that the purchase orders are accepted by the seller by 31 December 2018 and at least 20% of the price is paid by the same date) and decreases from 40% to 30% the additional applicable depreciation. Such regime would not apply to certain motor vehicles listed in the amending provisions.

With regard to the 150% extra-amortization related to the purchase cost of new high-tech tangible assets which are 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, the Law sets forth that the investments have to be made by 31 December 2018, or by 31 December 2019, provided that orders are accepted by the seller by 31 December 2018 and at least 20% of their price is paid by the same date.

With regard to the additional 40% extra-amortization for certain intangible assets introduced by the Budget Law of 2017, the Law also extends its application to new intangible assets such as supply chain systems aimed at e-commerce drop-shipping and other software and platforms related to 3D reconstructions.

Corporate tax rate provisions for securities companies

With effect from fiscal year (FY) 2017, the budget law 2017 reduced the corporate tax rate by 3.5% (i.e., from 27.5% to 24%) and provided a 3.5% surcharge for banks and financial entities. The 2017 Budget Law also introduced specific provisions for fund management companies. Such companies were in fact excluded from the application of the mentioned 3.5% corporate income tax (CIT) surcharge, and a 96% limit to the deduction of interest expenses was also extended. The Law extends the exclusion from the application of the additional 3.5% CIT rate, restoring the deduction of the interest expenses for 96% also to the securities companies (so-called SIM).

Changes to the Registration Tax regime

The Law better defines the applicable boundaries of Article 20 of the Registration Tax Code (RTC). In this regard it is stated that said article shall identify the correct applicable tax treatment based on the nature of each single deed to be registered, and regardless of any external interpretative elements (e.g., the behaviors assumed by the parties) or the contents included in other legal transactions which might be “linked” to the one to be registered.

The above changes have been brought in an attempt to eventually solve the interpretative aspects related to the provision in question, which in the past gave rise to various tax controversies. As an example, under the RTC, the sale of Italian shares and the contribution of an Italian going concern are both subject to a lump-sum registration tax of €200. In contrast, the sale of an Italian going concern triggers a proportional registration tax based on the going concern's fair market value at a rate varying from 0.5% to 9%.

Under the previous version of Article 20 of the RTC, the Registration Tax was applied based on the “intrinsic nature” and “juridical effects” of the deeds presented for registration, regardless of their legal title or apparent form. The Italian tax authorities are familiar with applying Article 20 to re-characterize a transaction into a straight sale of a going concern if it consists of a business contribution into a new company (NewCo) followed by the sale of the NewCo shares. In this case, a proportional Registration Tax applies to the transaction, as opposed to the fixed tax that would apply to both the business contribution and the sale of the shares. The Supreme Court generally has ruled in favor of the Tax Authorities.

Tax credit for training expenses related to the Industry 4.0 development plan

The Law provides a tax credit of 40% on personnel expenses incurred for training activities related to the “Industry 4.0” technology development program (i.e., big data application, data analysis, cloud and fog computing, cyber security, cyber-physical systems, advanced and collaborative robotics). Such benefit is subordinated to the condition that the training activities shall be agreed on through corporate or territorial collective agreements providing that the maximum granted tax credit for the beneficial company equals to €300,000 on an annual basis. The ordinary or periodic training activities may not be included within the benefit in question.
Recently the Court ruled also on the re-characterization of a 100% shareholding sale of an Italian company, with no pre-deal transaction, into a straight transfer of a going concern, subject to proportional Registration Tax.

Therefore the new provision should legally define the above concepts and mitigate the risk that tax authorities could in the future challenge this kind of transaction. It is in any case clarified by the explanatory report to the Law that the new reshaping of Article 20 would not prejudice in any case resort to the Italian GAAR if tax-avoidance arrangements were carried out by the taxpayers.

**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. The credit shall be indicated in the tax return related to the fiscal year of tax credit's maturity and the following years until complete absorption. The tax credit is irrelevant for CIT and Regional Tax on Productive Activities (IRAP).

**Changes to the interest expense rule**

The Law repeals the last provision of Article No. 96, paragraph 2, of the Italian Tax Code (Presidential Decree No. 917/1986) that provides the possibility of increasing the Gross Operating Profit (ROL) for an amount equal to the dividends relating to nonresident 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.

**One-off asset step up provisions**

The Law revamps another one-off opportunity for resident individual and nonresident entities to elect for a tax step-up of participations in unlisted Italian companies held as of 1 January 2018 through the payment of an 8% 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 basis of the substitute tax is represented by the value of the participation as of 1 January 2018 and needs to be certified by a sworn appraisal prepared no later than 30 June 2018. The 8% substitute tax may be either paid in full by 30 June 2018 or through three annual installments beginning 30 June 2018.

**Tax regime of income from capital and miscellaneous income arising from disposal of qualifying participations realized by individuals, acting as non-entrepreneurs**

The provision harmonizes the tax regime applicable to income from capital and miscellaneous income (e.g., capital gains) realized by individuals acting as non-entrepreneurs, with regard to the ownership and transfer of corporate participations, thus making irrelevant whether the shareholding is of a qualified or non-qualified nature. Such alignment has been considered necessary due to the increase of the substitute tax rate up to 26% (and the corresponding CIT rate decrease) which led to higher taxation of the non-qualified participations.

Such provision applies to income from capital earned from 1 January 2018 (provisional measures have been introduced), 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 nonresident entity from the transfer of any Italian shares is therefore subject to CIT in Italy at a 24% tax rate (i.e., 11.93% effective tax rate (ETR) for 2017 and 13.95% ETR for 2018), 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.

The same provision also applies to dividends matured in fiscal years following FY 2015 where the subsidiary was resident in a country included in the list and received in fiscal years during which the condition of Article 167 paragraph 4 of Italian Tax Code was satisfied (i.e., foreign nominal CIT rate higher than the 50% of the Italian rate). The provision also introduces taxation of 50% of the dividends distributed by a foreign entity carrying out as its main activity an actual industrial or commercial activity in the market of the state or territory that previously were fully taxed.
As a consequence:

- Full taxation applies to black list dividends i.e., if the foreign nominal CIT rate is lower than 50% of the Italian rate, unless the two aforementioned conditions could apply.

- An exemption may be obtained if the taxpayer can document that the participation in the foreign entity does not have as its purpose the allocation of income to countries or territories with a privileged tax regime i.e., the foreign income has already been subject to an adequate level of taxation abroad according to Article 167 paragraph 5 letter b) of the Italian Tax Code.

- Fifty percent of the dividend is subject to taxation but is allowed an underlying tax credit for any taxes paid abroad by the subsidiary, if the taxpayer can document that the foreign entity carried out as its main activity an actual industrial or commercial activity in the market of the state or territory according to Article 167 paragraph 5 letter a) of the Italian Tax Code.

Endnote

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EYG no. 07178-171Gbl
1508-1600216 NY
ED None

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