Executive summary

On 28 December 2018, the Italian Government published, in the Official Gazette, the Legislative Decree (Decree) transposing the European Union (EU) Anti-Tax Avoidance Directive (ATAD) in the Italian legislation.1

The Government had previously approved the final version of the Decree on 28 November with limited changes to the draft of 8 August 2018. The limited differences between the draft version and the final version of the Decree mainly relate to the interest expense deduction rules for real estate companies and other specific cases, migration into Italy of individual businesses, and a few amendments to the Controlled Foreign Corporation (CFC) provision.

Generally, as described in detail in EY Global Tax Alert, Italy issues draft legislative decree for ATAD implementation, dated 21 September 2018, the Decree contains new rules with reference to the following areas:

1. Deduction of interest expenses
2. Exit taxation
3. Inbound migrations
4. CFCs
5. Dividends and capital gains associated with foreign subsidiaries
6. Hybrid mismatches

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No changes were introduced with reference to the General Anti-Avoidance Rule (GAAR), as Italy’s current legislation was considered in line with the ATAD.

The new set of provisions should enter into force for calendar year companies as of 1 January 2019, with the exception of the hybrid mismatch rules that should apply from 1 January 2020, and with specific reference to reverse hybrids from 1 January 2022.

This Alert highlights the key provisions of the Decree.

**Detailed discussion**

**Deduction of interest expenses**

The Decree replaces Article 96 of the Italian Tax Code (ITC) regarding interest expense deduction rules. The new language rephrases the existing 30% earnings before interest, taxes, depreciation and amortization (EBITDA) limitation rule with some changes, one of the main changes being the reference to a tax adjusted EBITDA (and no longer to an accounting EBITDA).

The final version of the Decree abolishes a number of minor exceptions by making the ordinary 30% EBITDA rule fully applicable to real estate companies and, more in general, in the case of expenses associated with the issuance of certain debt securities.

**Exit taxation**

The new rule reiterates the existing exit taxation provision (Article 166 ITC) with some exceptions. Among the various differences with the old rule, the Decree no longer allows the deferral of capital gain taxation on migrations to EU or European Economic Area jurisdictions.

**Inbound migrations**

The new rule reiterates the existing provision (Article 166-bis ITC) by clarifying the tax basis recognized by Italy upon entry. The final version of the Decree also makes this provision applicable to taxpayers other than companies, like individual businesses.

**CFCs**

The new rule mainly restates the existing one (Article 167 ITC). The final version of the Decree clarifies the concept of “passive income” by including the income derived from the sale of goods to related parties and by clarifying the concept of “low-value services” by reference to Italian transfer pricing regulations.

**Dividends and capital gains**

The Decree also introduces some changes to the existing rules applicable to Italian companies deriving foreign dividends and capital gains from the disposal of foreign subsidiaries.

**New rules on hybrid mismatches**

The Decree introduces a new set of anti-hybrid mismatch rules aimed at contrasting the phenomena of “double deduction” and “deduction without inclusion” derived from conflicts in the qualification of certain arrangements or transactions between one or more tax jurisdictions.

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**Endnote**

1. Legislative Decree n. 142 of 29 November 2018 transposes the EU Directive n. 1164/2016, also known as the EU ATAD, as amended by EU Directive n. 952/2017 (ATAD 2).
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