

## Italy - New tax measures for the economic growth

Italy introduced new tax measures (Law Decree No. 34/2019, as confirmed by Law No. 58/2019) aimed at fostering economic growth and simplifying tax procedures, including *inter alia*:

- Tax neutral contributions of shares
- Tax free step-up upon merger, division or contribution of going concern
- Changes to the patent box regime
- Super-amortisation of new tangible instrumental assets
- Reduction of corporate income tax rate for profits allocated to reserves ("mini-IRES")
- Deduction of real estate property tax ("IMU") for income tax purposes
- Securitisation transactions
- Tax incentives for real estate development
- Investments in European Long Term Investment Funds
- Special tax regimes to attract individuals to Italy
- New deadlines for tax returns
- Invitation to settle

### Tax neutral contribution of shares

The current rules allow a *de-facto* tax neutral treatment for the contribution of a controlling participation (*i.e.* more than 50%) or that allowed the beneficiary to increase the control. In particular, no taxable capital gain arises if the increase of the net equity of the beneficiary is equal to the tax basis of the contributed shares.

Under the new rule, in addition to the above, it is also possible to achieve a *de-facto* tax neutral treatment of the contribution of shares (under the same mechanism) if the following conditions are both met:

- the contributed shares represent more than 20% of the voting rights or 25% of the capital of the company (respectively, more than 2% or 5% in case of listed companies);
- the company beneficiary of the contribution (either a new company or an existent company), is entirely owned by the contributor.

In such a case, the holding period requirement of the participation exemption regime is increased (from twelve) to sixty months.

It is worth mentioning that, according to the Italian Revenue Agency, the above mentioned *de facto* tax neutral regime should apply solely if both the beneficiary and the company whose shares are contributed are resident in Italy for tax purposes and it is, therefore, not available if either one is not resident in Italy for tax purposes (Ruling No. 43/2017, regarding the contribution of more than 50% of the shares of a non-Italian resident company). In our view, such position is however contrary to the freedom of establishment under Art. 49 of the Treaty on the Functioning of the European Union.

### Tax free step-up upon merger, division or contribution of going concern

A tax free step-up in the tax basis of goodwill and tangible and intangible assets up to the overall amount of EUR 5 million, allowing higher depreciation, is available to companies beneficiaries of merger, division or contribution of going concerns carried out by 31 December 2022, provide that the following conditions are met:

- the companies involved in the merger, division or contribution of going concern have been carried out an active business for at least two years;
- the companies involved in the merger, division or contribution of going concern do not belong to the same group. In particular: (a) any of the companies involved does not hold more than 20% of the other company; and (b) the companies involved are not, directly or indirectly, controlled by the same company.

No tax free step-up applies, if, within four years following the transaction, the beneficiary company carries out another extraordinary transaction or sells the assets, unless such company obtains advance clearance from the Italian tax authorities.

### Changes to the patent box regime

The access to the patent box regime (*i.e.*, exclusion from the taxable income of 50% of the income derived from qualifying IP assets) is simplified in the cases in which the legislation contemplates a ruling procedure to determine the income from qualifying IP assets (*i.e.*, direct use of IP assets; IP assets licensed to related parties; sale of IP assets to related parties).

Pursuant to the new rule, as an alternative to the ruling procedure, taxpayers may self-determine the income from qualifying IP assets. For such purpose, taxpayers are required to prepare specific documentation illustrating the criteria adopted to determine the income from qualifying IP assets.

The benefit is split in three equal parts in the year in which the option has been exercised and in the two following years.

In case of income adjustments further to a tax assessment by the Italian tax authorities, administrative penalties for incorrect tax return (90%-180% of the taxes assessed) do not apply, if the taxpayer submits the documentation idoneous to allow the control by the Italian tax authorities.

### Super-amortisation of new tangible capital assets

Investments in new tangible instrumental assets made from 1 April 2019 to 31 December 2019 (or 30 June 2020, provided that the seller accepts the order and the investor pays at least 20% of the price by the end of 2019) by enterprises and professionals can benefit from a 30% increase of their amortisation cost.

Eligible investments do not benefit of the super-amortisation for the amount exceeding EUR 2.5 million.

### Reduction of corporate income tax rate for profits allocated to reserves ("mini-IRES")

Entities subject to corporate income tax (IRES) are taxed with a reduced tax rate on the amount of income corresponding to profits allocated to reserves - other than statutory reserves - within the limits of the increase of the net equity.

In particular, the ordinary tax rate for corporate income tax purposes (24%) is reduced to:

- 22.5% in 2019;
- 21.5% in 2020;
- 21% in 2021;
- 20.5% in 2022;
- 20% from 2023.

### Deduction of real estate property tax ("IMU") for income tax purposes

From 2023, real estate property tax (IMU) will be fully deductible (currently it is 40% deductible) from business and professional income.

In tax years 2019-2022, IMU will be deductible from business and professional income in the measure of:

- 50% in 2019;
- 60% in 2020 and 2021;

- 70% in 2022.

### Securitisation transactions

The new measures modified the statutory provisions regulating securitisation transactions (Law No. 130/1999), introducing important amendments relevant also from a tax perspective:

- it is allowed to use corporate vehicles (so called “ReoCo”) within securitisation transactions for the purpose of acquiring and managing real estate assets in the sole interest of the securitisation. The amounts derived by the ReoCo from the holding, management and disposal of the assets are due by the ReoCo to the securitisation SPV and can be used solely to satisfy the rights incorporated in the notes issued by the securitisation SPV. Any rights, assets or amounts derived by the ReoCo in relation to the securitisation constitute a segregated cover pool. On the basis of such qualification, as clarified in the explanatory report of the new measures and in line with the guidelines of the Italian Revenue Agency with respect to securitisation SPVs (Circular Letter No. 8/2003), ReoCos should not be subject to corporate income tax (IRES) and regional tax on productive activities (IRAP) on the profits deriving from the business carried out in the exclusive interest of the securitisation transaction;
- ReoCos taking over financial lease agreements or acquiring assets under financial lease agreements are subject to the same tax treatment applicable to leasing companies;
- transfer taxes (registration tax, cadastral tax and mortgage tax), generally due at proportional rates, apply at the fixed amount of EUR 200 each in the following cases:
  - purchase or sale by a ReoCo of real estate assets under financial lease in case of termination of the lease depending on the lessee;
  - any agreements or deeds regarding the transfer of real estate assets to a ReoCo, including assumption of debt and guarantees of any type;
  - transcriptions on real estate and cadastral registers of the transfer of real estate assets to a ReoCo;
  - sale of real estate assets by a ReoCo to persons carrying out a business activity, provided that the purchasers commit to sell those real estate assets within five years. It should be mentioned that, while the law does not explicitly mention undertakings for collective investment, according to the explanatory report of the new measures, this treatment is available also to such undertakings. If the sale does not occur within five years, ordinary transfer taxes are due and a 30% administrative penalty applies;
  - sale of real estate assets by a ReoCo to individuals entitled to “first home” tax relief.

### Tax incentives for real estate development

The purchases of entire buildings carried out by real estate construction and refurbishment companies by 31 December 2021 are subject to transfer taxes (*i.e.*, registration tax and mortgage and cadastral taxes) at the fixed amount of EUR 200 each if the following conditions are met:

- the building is either (i) demolished and re-built, or (ii) subjected to major qualifying refurbishment works; and
- at least 75% of the building is sold within ten years from the acquisition.

If the conditions are not fulfilled, transfer taxes apply at the ordinary tax rates and interest and a 30% administrative penalty are due.

### Investments in European Long Term Investment Funds

Profit distributions and capital gains deriving from investments in European Long Term Investments Funds (ELTIF) by individuals resident in Italy are exempt from individual income tax (IRPEF). The exemption is available also if the investments are made through undertakings for collective investments investing entirely in ELTIF funds.

The exemption applies provided that the following conditions are met:

- maximum annual investment in ELTIF per individual: EUR 150,000;
- maximum total investment in ELTIF per individual: EUR 1,500,000;
- the investment is held for at least five years. If the units of the ELTIF or of the funds investing in ELTIF is sold before five year, profits received and capital gains realised are subject to standard taxation (plus interest; no administrative penalties apply), unless the amounts derived from the divestment are reinvested within 90 days;
- the funds raised by an ELTIF manager do not exceed EUR 200 million per year and EUR 600 million in total;
- at least 70% of the ELTIF is invested in eligible investments, as defined by Art. 10 of EU Regulation No. 2015/760, referring to portfolio enterprises that are tax resident in Italy or in a EU or EEA States with a permanent establishment in Italy.

In case of transfer *mortis causa*, ELTIF units or units of funds investing entirely in ELTIF funds are not subject to inheritance and donation tax.

As an experiment, the exemption regime applies to investments that will be made in year 2020.

The exemption regime is subject to the approval of the EU Commission.

### Special tax regimes to attract individuals to Italy

#### *Special tax regime for professors and researchers*

The special tax regime for researchers and teachers grants a 90% exemption from individual income tax (IRPEF) and a full exemption from regional tax on productive activities (IRAP) of the remuneration received by professors and researchers who have transferred their tax residence to Italy.

The following amendments have been introduced:

- the total validity period is increased to six years;
- the validity period can be extended as follows:
  - eight years, if the eligible taxpayer has at least one under-age or dependent child or he/she becomes owner of at least one residential real estate asset in Italy;
  - eleven years, if the eligible taxpayer has at least two under-age or dependent children;
  - thirteen years, if the eligible taxpayer has at least three under-age or dependent children;
- specific rules apply to Italian citizens.

#### *Special tax regime for impatriate workers*

The special tax regime for impatriate workers grants a partial exemption from individual income tax (IRPEF) and a full exemption from regional tax on productive activities (IRAP) of employment and self-employment income received by workers who have transferred their tax residence to Italy.

The following amendments have been introduced:

- the partial exemption is increased (from 50%) to 70%;
- the eligibility requirements are reduced and simplified. In particular, the partial exemption applies if (i) the impatriate workers have not been resident in Italy for the two years

preceding their transfer to Italy; (ii) they commit to reside in Italy for at least two years and (iii) their activity is mainly carried out in Italy;

- the regime is also available to impatriate workers who set up a business activity in Italy starting from 2020;
- the validity period can be extended from five years to ten years, if the eligible taxpayer has at least one under-age or dependent child or he/she becomes owner of at least one residential real estate asset in Italy. In both cases, the exemption is reduced to 50% in the second five years. A 90% exemption applies in the second five years, if the eligible worker has at least three under-age or dependent children;
- the exemption is increased to 90%, if the impatriate worker transfers the residence in one of the southern regions of Italy;
- a 50% exemption is available to professional sportsmen upon payment of an amount equal to 0.5% of the taxable base. No further reductions apply;
- specific rules apply to Italian citizens.

### *Special tax regime for pensioners*

The special tax regime for pensioners consists of a reduced (7%) substitutive taxation on foreign-sourced income of any kind received by pensioners who transfer their residence for tax purposes to Italy, in one of the municipalities having a population of less than 20 thousand inhabitants located in the southern regions of Italy.

The following amendments have been introduced:

- the tax relief applies solely to income produced abroad as determined pursuant to the criteria set forth under Italian rules;
- the validity period is extended to ten years;
- the late payment of the substitutive tax is not a cause of termination of the regime.

### New deadlines for tax returns

Individuals, partnerships and associations must file their income tax returns electronically by 30 November of the year following the relevant calendar year.

Companies and entities subject to corporate income tax (IRES) must file their income tax returns electronically by the end of the eleventh month following the end of their tax year.

### Invitation to settle

With regard to tax assessments issued from 1 July 2020, the Italian tax authorities must notify to the taxpayer, before issuing a tax assessment, an invitation to settle, except for cases of urgency or founded danger of unsuccessful tax collection.

In case of negative outcome of the settlement procedure, the tax assessment must describe the reasons why the Italian tax authorities have considered the clarifications and documentation provided by the taxpayer not sufficient.



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### **Disclaimer**

*The information contained herein have general nature and are not intended to be an exhaustive examination, to express an opinion or to provide legal advice. If you would like to receive more information, please contact Francesco Capitta at: [f.capitta@macchi-gangemi.com](mailto:f.capitta@macchi-gangemi.com).*