MAISTO E ASSOCIATI

TAX ALERT 10/2014

Highlights

- New "patent box" regime
- Increase of IRAP tax rate
- Deductibility of labour costs for IRAP purposes
- Higher taxation of dividends received by non-commercial entities
- Limitation of exemption for life insurance policies

The Italian Government has approved and made public the 2015 Finance Bill that will be lodged before Parliament for final approval to be expected before year-end.

1. Introduction of a new “patent box” regime

The 2015 Finance Bill provides for a “patent box” regime effective as from 2015 following the experience of other EU Member States.

The eligible taxpayers
The regime will apply to business income derived from the use or exploitation of IP by resident companies and individual entrepreneurs or residents of treaty countries having an adequate exchange of information. The regime is subject to an irrevocable election for five tax periods.

Eligibility is also subject to the condition that the taxpayer conducts R&D activities, directly or through universities, research institutions or equivalent entities, with the aim of developing qualifying IP.

The qualifying IP
Intangible assets falling into the scope of the Patent Box are patents, trademarks that are functionally equivalent to patents (i.e. excluding marketing trademarks), processes, formulas and any other kind of know-how that can be legally protected.

Benefits of the regime
Under the regime a 50% exemption will apply for both corporate tax (IRES) and regional tax (IRAP) purposes on income arising from:

a) exploitation of the qualifying IP vis-à-vis third parties;
b) exploitation of the qualifying IP vis-à-vis related parties;
c) direct use of the qualifying IP (i.e. use of the asset for the taxpayer's own business activities).

The exemption is limited to 30% in 2015 and 40% in 2016 and shall apply at the standard 50% rate as from 2017. The rules for the determination of the income that may be partially exempted refer to the incidence of R&D activities and shall be enacted through a further Ministerial Decree.

The partial exemption of the income arising from intra-group transactions and from the direct use of the IP is subject to the conclusion of an APA.

Gains arising from the sale of the qualifying IP are fully exempt to the extent that at least 90% of the proceeds is reinvested in the maintenance or development of other qualifying IP within the two tax periods following the sale.

2. Amendments to regional tax on productive activities (IRAP)

Increase of tax rate
Starting from 2014 the standard IRAP rate is increased back from 3.5% to 3.9%.

Full deductibility of labour costs for IRAP purposes
Starting from 2015 labour costs will be fully deductible for IRAP purposes, to the extent they refer to open-ended employment agreements.

3. Increase of taxation of dividends received by non-commercial entities

Starting from distributions made in 2014 the taxable portion of dividends (subject to 27.5% corporation tax) received by resident non-commercial entities (including non-commercial trusts and banking foundations) shall be increased from 5% to 77.74%. The effective tax rate is therefore increased from 1.375% to 21.38%.

4. More stringent conditions for exemption of proceeds from life insurance policies

Starting from 2014 the exemption of proceeds of life insurance policies becoming payable upon death of the insured person shall apply on the beneficiaries limited to the portion attributable to the life-risk component. This will require a revisiting of tax planning strategies based on unit-linked and index-linked policies for many individuals.

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