



Law decree on urgent measures for economic growth published in the Italian Official Gazette

Law Decree No. 34 of 30 April 2019 (the "Decree") was published in the Italian Official Gazette on 30 April 2019 and entered into force on 1 May 2019. The Decree contains tax provisions aimed at fostering economic growth and needs to be converted – possibly with amendments – into law within 60 days from its entry into force.

The Decree enacts many important tax law changes and, in particular:

- (i) reopens the terms for the "Enhanced Depreciation" regime;
- (ii) reduces corporate tax rate on retained earnings;
- (iii) increases the deduction of the municipal real estate tax (IMU) for corporate tax purposes;
- (iv) amends and simplifies the patent box regime;
- (v) broadens the taxation of "Impatriates" to make it more attractive;
- (vi) provides for a new incentive for building redevelopment;
- (vii) introduces a free tax step-up of capital assets in case of mergers, divisions and contributions of going concern between unrelated parties; and
- (viii) enacts a new tax regime for Real Estate Owned Companies ("Reocos") in securitization transactions.

I. Reopening of the "Enhanced Depreciation"

The Decree reopens the terms of the temporary "Enhanced Depreciation" regime, which was enacted for the first time by the 2016 Budget Law.

Under this regime, the acquisition cost of new tangible assets that are purchased (or acquired through a financial lease) between 1 April 2019 and 31 December 2019 (or 30 June 2020, if certain additional conditions are met) and are employed to carry on a business is increased by 30% for tax depreciation purposes. The regime does not apply to means of transportation and certain other capital assets (e.g. real estate).

The "Enhanced Depreciation" regime does not apply to the part of the investment exceeding EUR 2.5 million.

II. Reduced tax rate on retained earnings

The Decree provides for a reduced corporate tax rate applicable as from 2019 to retained earnings. For calendar year companies, the reduced rates are as follows: 22.5% for 2019, 21.5% for 2020, 21% for 2021 and 20.5% starting from 2022.

The retained earnings benefitting from the reduced rate (i) do not include "non-disposable" reserves formed with profits that are booked in the P&L but not actually realized and (ii) may not exceed the accounting net equity increase calculated between 2018 and the relevant year for which the reduced rate should be applied,

without considering the retained earnings that have already benefitted from the reduced rate in previous years (the “net equity increase cap”).

The retained earnings exceeding the net equity increase cap may be carried forward to subsequent tax years for the purpose of applying the reduced tax rate. The benefit of the reduced rate may be transferred to (i) the fiscal unit in the case of tax consolidation or (ii) corporate shareholders if the company that retains earnings has opted for being treated as fiscally transparent.

The new regime should not materially impact the taxation of banks and other financial intermediaries because the Decree provides that the corporate surtax (3.5%) for banks will be adjusted upwards to make up for the reduced corporate tax rate.

III. **Deductibility of the municipal real estate tax for corporate tax purposes**

Under past rules, the municipal real estate tax (IMU) was deductible for corporate tax purposes only to the extent of 40% of its amount. The Decree increases the IMU deduction from the corporate tax base as follows (for calendar year companies): 50% for 2019, 60% for 2020 and 2021, and 70% starting from 2022.

IV. **Amendments to the patent box regime**

Under the Decree, taxpayers who choose to take the benefit of the patent box regime with respect to intangible property (“IP”) that is used in the business activity (i.e. the value of the IP is embedded in the price of the goods or services sold) can opt to calculate autonomously the economic contribution of the IP in their tax return instead of filing a tax ruling application. Before the amendments the tax ruling procedure was mandatory.

According to the new regime, if taxpayers choose not to file the ruling application and compute the economic contribution directly in their tax return:

- (i) appropriate supporting documentation has to be drawn up in accordance with specific regulations that should be issued by Tax Authorities within 90 days of the entry into force of the Decree;
- (ii) the benefit of the patent box regime is split in three equal amounts that can be taken as an income downward adjustment in the tax return in which the option is made and in those relating to the two following tax years;
- (iii) in the case of subsequent tax audits that lead to an adjustment of the patent box benefit, no administrative penalty applies if taxpayers timely provide the Tax Authorities with the required supporting documentation (“penalty protection regime”).

Taxpayers who have already applied for a tax ruling but have not yet obtained it may waive the tax ruling procedure and elect for this new option.

Finally, the Decree extends the penalty protection regime to those taxpayers that have claimed the application of the patent box regime to income from the licensing of the qualifying IP, provided that no tax audit has already started and that they indicate in the tax return that they have the appropriate supporting documentation.

V. **Broadening of the “*Impatriate* regime”**

The Decree amends the so-called “*Impatriate* regime” (a tax regime aimed at attracting in Italy non-resident employed and self-employed individuals). These amendments should apply only to individuals transferring their tax residence to Italy as from tax year 2020.

The *Impatriate* regime provides for a partial exemption applicable to Italian-sourced employment income (including income assimilated to employment income) and self-employment income. The Decree increases the exemption from 50% of the income to 70%. In case of individuals moving to a Southern Region, Sicily or Sardinia, the

partial exemption is increased to 90%. The Decree also extends this partial exemption to business income derived from activities starting from 1 January 2020. The new *Impatriate* regime applies for the tax year in which the transfer of tax residence occurs and the following 4 tax years.

Moreover, the Decree broadens the scope of application of the *Impatriate* regime as it: (i) shortens from 5 to 2 years the period for which the individual must not have been a tax resident of Italy prior to the transfer; (ii) eliminates the condition that the individual must perform a managerial activity or have certain high qualifications and specializations; and (iii) includes the possibility, in some cases, to extend the duration of the regime by 5 additional years.

Finally, the Decree contains special rules for non-resident Italian citizens who are not enrolled in the registry for Italian citizens resident abroad ("AIRE"). For these taxpayers the Decree confirms the eligibility to the *Impatriate* regime if they qualify as foreign tax residents under any applicable tax treaty.

VI. Incentives for real estate redevelopment

Under the Decree, registration tax, mortgage tax and cadastral tax apply at the lump-sum amount of EUR 200 for each tax (instead of proportional taxes) if an enterprise buys buildings between 1 May 2019 and 31 December 2021 for the purposes of demolishing, redeveloping (enhancing the buildings' anti-seismic or energy-efficiency features) and selling them in the following 10 years.

If the enterprise does not redevelop and sell the building within the 10-year limit, transfer taxes apply according to ordinary rules and rates, plus a 30% penalty and interest for late payment.

VII. Free step-up of the tax basis of capital assets in case of mergers, divisions and contributions of going concern

The Decree enacts a free tax step-up regime for both corporate and regional tax purposes for companies that receive assets upon mergers, divisions or contributions of going concerns that take place between 1 May 2019 and 31 December 2022. In particular, the increased accounting value of goodwill and capital (tangible and intangible) assets that the receiving company books in its account will be recognized also for tax purposes. The amounts freely recognized for tax purposes, however, are capped at EUR 2.5 million.

The benefit does not apply to mergers, divisions and contributions of going concern that occur between companies belonging to the same group (and also if the transferring company holds more than 20% of the receiving company, or vice versa). The free tax step-up only applies provided that the companies involved in the qualifying transactions have existed and carried out their business activity for at least 2 years.

The tax step-up is effective as from the tax year following the year in which the transaction takes place. The tax step-up, however, is forfeited (without the application of any penalty) if, in the four tax years following the transaction, the company benefitting from the step-up either (i) undergoes another reorganization transaction (e.g. mergers, divisions) or (ii) transfers the assets that have been stepped up. In these cases, taxpayers may file a tax ruling application with the Tax Authorities to prove that their behaviour is not abusive and, therefore, the tax step-up should not be forfeited.

VIII. Securitization

The Decree introduces some tax changes to the securitization law (Law No. 130 of 30 April 1999). These changes entail that:

- (i) Reocos supporting securitization transactions are not subject to corporate tax and regional tax on the income that they pass on to the securitization SPV (in line with the guidelines issued in the past by the Tax Authorities with respect to securitization SPVs); and

- (ii) Lump-sum transfer taxes (registration, cadastral and mortgage taxes) at EUR 200 each apply to transfer of real estate and leasing agreements to Reocos and, under certain circumstances, from Reocos to third parties.

In addition, the Decree introduces the possibility to implement securitization of real estate, registered movable goods and rights in rem (instead of credits).

For further information: **Maisto e Associati**

Milan

Piazza F. Meda 5
20121
T: +39.02.776931

Rome

Piazza d'Aracoeli 1
00186
T: +39.06.45441410

London

2, Throgmorton Avenue
EC2N 2DG
T: +44.207.3740299

This newsletter is intended to provide a first point of reference for current developments in Italian law. It should not be relied on as a substitute for professional advice. If further information or advice is required please refer to your Maisto e Associati contact or info@maisto.it.

Copyright © 2019 Maisto e Associati

