



# Italy: clarifications on the extra depreciation of certain tangible assets

**Tax Alert**  
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## Offices

### Milan

Via Vittor Pisani 27, 20124  
T: +39 02 676441 - F: +39 02 67644758

### Ancona

Via I° Maggio 150/a, 60131  
T: +39 071 2916378 - F: +39 071 2916221

### Bologna

Via Andrea Costa 160, 40134  
T: +39 051 4392711 - F: +39 051 4392799

### Florence

Viale Niccolò Machiavelli 29, 50125  
T: +39 055 261961 - F: +39 055 2619666

### Genoa

P.zza della Vittoria 15/12, 16121  
T: +39 010 5702225 - F: +39 010 584670

### Naples

Via F. Caracciolo 17, 80122  
T: +39 081 662617 - F: +39 081 2488373

### Padua

Piazza Salvemini 2, 35131  
T: +39 049 8239611 - F: +39 049 8239666

### Perugia

Via Campo di Marte 19, 06124  
T: +39 075 5734518 - F: +39 075 5723783

### Pescara

P.zza Duca D'Aosta 34, 65121  
T: +39 085 4210479 - F: +39 085 4429900

### Rome

Piazza delle Muse 8, 00197  
T: +39 06 809631 - F: +39 06 8077459

### Turin

C.so Vittorio Emanuele II 48, 10123  
T: +39 011 883166 - F: +39 011 8395865

### Verona

Via Leone Pancaldo 68, 37138  
T: +39 045 8114111 - F: +39 045 8114390

Under article 1 (91-94) and (97) of the 2016 Budget Law<sup>(1)</sup>, certain taxpayers can benefit from a 40 percent increase in the depreciable income tax (IRES and IRPEF) base of certain new tangible assets. The depreciable cost of the asset rises to 140 percent, allowing higher deductible depreciation charges and lease payments.

On 26 May 2016, the Italian Revenue Agency issued Circular no. 23 (the 'Circular'), which provides extensive clarifications on the new tax break. Some of the main features are briefly summarized below.

## Who benefits

The benefit is available to the following taxpayers, regardless of their legal form and size, and the industry in which they operate.

- Italian enterprises and permanent establishments of non-resident enterprises.
- Non-business organizations, with respect to any business they do.
- Independent workers.
- Natural persons who have a business, trade or profession, even if they already benefit from other tax breaks, such as the '*regime dei minimi*' tax regime.

## Which assets qualify

Investments in new tangible assets are eligible for the benefit. The Circular provides the following clarifications.

### Eligible assets

The measure applies to **assets purchased under a transfer of ownership agreement or a finance lease** (in the latter case only the lessee is eligible for the benefit). It also applies to assets **produced in-house or under a procurement contract**.

(1) Law no. 208 of 28 December 2015, published on 30 December 2015 in Italian Official Gazette no. 302.

The assets must be 'relevant' to the business, i.e. used over the long term as production tools (therefore, merchandise and consumables are ineligible).

The measure applies exclusively to **new assets** and not to those that have already been used in any way. For example, cars displayed in a showroom are eligible, while a car used in road tests by a dealership is not.

Complex assets, which sometimes include used assets, are eligible as long as the **overall complex asset is new**. In other words, the cost of the used assets must not account for most of the cost of the complex asset as a whole.

The law does not specify that the assets must be used in production facilities located in Italy. Therefore, the benefit should also apply to **assets used abroad**, as long as their depreciation charges are included in the tax base in Italy.

### *Ineligible assets*

The benefit does not apply to:

- intangible assets;
- assets obtained under an operating lease or rental agreement;
- tangible assets whose tax depreciation rate (set in the Ministerial Decree of 31 December 1988 – the 'Decree') is less than 6.5 percent;
- buildings and construction work;
- the assets listed in Appendix 3 of the 2016 Budget Law (e.g. rolling stock and railway and tramway equipment).

### **Relevant dates**

The benefit applies to assets purchased between 15 October 2015 and 31 December 2016.

In accordance with the accruals principle established in article 109 of the Italian Income Tax Code (the 'IITC'), the purchase costs of assets are recognized on the date of delivery or dispatch of the assets or, if later, the date on which ownership or other property rights are transferred. For the purposes of the extra depreciation measure, this rule also applies to IAS/IFRS adopters.

In the case of assets purchased under a finance lease contract, the relevant date is when the asset is delivered to the lessee (or when it is tested and approved). The date on which the purchase option is exercised is irrelevant.

The Circular also specifies the criteria to be followed when determining the relevant date for assets purchased under a procurement contract or produced internally.

In accordance with article 102(1) of the IITC, the benefit applies only from the fiscal year in which the taxpayer begins using the asset.

### **How the measure works**

As mentioned above, the benefit consists of a 40 percent increase in the depreciable base of new tangible assets for income tax (IRES and IRPEF) purposes (it has been clarified the benefit cannot be applied for regional tax (IRAP)

purposes). This means that the depreciable cost rises to 140 percent, allowing higher deductible depreciation charges and lease payments. The Circular explains how the benefit actually works.

- The 40 percent increase is not deducted in the profit and loss account, but in the tax return.
- For tax purposes, the depreciation charge must be calculated using the rates set in the Decree (halved in the first year<sup>(2)</sup>). Lease payments must be deducted over a period no shorter than half the depreciation period established in the Decree.
- If the taxpayer does not take the entire benefit, the difference cannot be carried forward.
- The benefit can be combined with other types of tax benefits, unless there are any specific tax rules to the contrary as provided for by the legislation enforcing the other tax benefits.
- If the asset is sold before the taxpayer has used the full benefit:
  - the increase must be adjusted, in the year of transfer, on a pro rata basis;
  - any extra depreciation that has not been deducted is lost (i.e. the purchaser cannot use the benefit);
  - the seller does not have to return any deductions (the law does not provide for a recapture mechanism);
  - any capital gain or loss is simply computed as the difference between the sale price and the purchase cost, without the 40 percent increase, as the benefit applies for depreciation purposes only.
- For assets purchased under a finance lease agreement, the 40 percent markup only applies to the portion of the lease payments that constitutes the principal (which, together with the purchase option price, is the acquisition cost of the asset) and not to the interest portion. The higher lease payments are deductible over the length of the agreement (and, in any case, over a period no shorter than half the depreciation period established in the Decree). Instead, the higher purchase option price is deductible via depreciation, after redemption. These criteria must also be followed by IAS/IFRS adopters, even if they record assets purchased under a lease agreement in their balance sheet and deduct depreciation.
- The benefit also applies to assets that the IITC allows to be fully deducted in the year of purchase without any depreciation, i.e. those costing up to €516.46. Even if, by applying the 40 percent increase, the overall cost of the asset exceeds €516.46, the cost can still be fully deducted in the year of purchase.

(2) For instance, if (i) an asset is eligible for the benefit and has a cost of €100 and (ii) the Decree establishes a 10 percent depreciation rate for that asset for tax purposes, the taxpayer can depreciate a cost of €140 (100 plus 40 percent). Therefore, it can decrease its taxable income by an extra €4 in its tax return. This is true even if the depreciation rate for accounting purposes is different from the depreciation rate for tax purposes.

## Impact on the advance payment of taxes

The new rule will have no impact on the calculation of advance IRES/IRPEF payments for tax year 2015, regardless of the method used to calculate the taxes. Moreover, when calculating the advance payments for tax year 2016<sup>(3)</sup> using the 'historical' method (i.e. based on a certain percentage of the IRES paid in the previous year), taxpayers must use the 2015 numbers without the benefit.

## Effects of the new measure

The measure does not affect the taxability of assets in terms of:

- calculating capital gains or losses on the sale of an asset;
- the ceiling for the deduction of maintenance and repair costs;
- the vitality test used to identify dormant companies;
- calculating the value of tangible assets, charges and lease payments in sector studies.

(3) Calendar-year taxpayers have to make their first advance payment in June 2016.

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## Contatti

### Studio Associato - Consulenza legale e tributaria

#### Fabio Avenale

KPMG, Tax & Legal  
T: +39 011 883166  
E: [favenale@kpmg.it](mailto:favenale@kpmg.it)

[kpmg.com/it](http://kpmg.com/it)

[kpmg.com/socialmedia](http://kpmg.com/socialmedia)



#### Paola Sella

KPMG, Tax & Legal  
T: +39 045 811 4111  
E: [psella@kpmg.it](mailto:psella@kpmg.it)

[kpmg.com/app](http://kpmg.com/app)



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