Highlights of the 2017 fiscal package

Tax Focus

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The 2017 fiscal package is contained in two separate measures: Law Decree no. 193/2016 (converted into the Law no. 225/2016 and entered into force starting from 24th October 2016) and the Budget Law (approved by the Chambers on 7th December 2016 and waiting to be published in the Italian Official Gazette).

1. Super depreciation (extension) and hyper depreciation (Article 1 par. 8 of the Budget Law)

Super depreciation:

The article 1(8) of the 2017 Budget Law extends the super depreciation regime provided for by article 1(91) of Law no. 208/2015 by a year.

Therefore, for income tax purposes and in exclusive reference to calculating depreciation rates and financial lease payments, for persons who receive business income and anyone who practises an art or profession that invests in new tangible operating assets by 31 December 2017, the depreciable cost is increased by 40%.

Under the new measure, this benefit also applies to investments made by 30 June 2018, as long as the order is accepted by the seller and at least 20% of the cost is paid in advance before the end of 2017.

The benefit, which is relevant for income tax and not IRAP (Regional Income Tax) purposes, consists in increasing the amount that can be deducted in depreciation or lease payments for tax purposes by 40%. For lease payments, the benefit only applies to capital, which may be increased by the price of the final buyback option.

Unlike in the previous version, however, the vehicles and other forms of transport indicated in letters b) and b-*bis*) of paragraph 1 of article 164 of the Italian Incomes Tax Code ('*vehicles for public use*') are excluded. Motor vehicles used solely as operating assets in the company's activities therefore still benefit.

The benefit is only for the purposes of depreciation and, therefore, has no impact on any capital gains or losses if an asset is transferred, or on the ceiling for maintenance and repairs.

The benefit does not apply to investments in:

— buildings and construction;

— assets for which the Ministerial Decree of 1988 provides a depreciation co-efficient of less than 6.5%;

— the assets indicated in Appendix 3 to the 2016 Stability Law (*e.g.* pipelines, rolling stock).

Hyper depreciation:

To facilitate technological transformation, the 'hyper depreciation' regime is being introduced for certain operating assets expressly indicated in the Budget Law and linked to a company's production management system or supply network. Under article 1 paragraphs 9 and 10 of the Budget Law, the cost is increased by the following percentages:

a) 150% for investments in the new operating assets listed in Appendix A to the Budget Law;

b) 40% for investments in the intangible operating assets listed in Appendix B to the Budget Law.

The benefit for investments in intangible operating assets (point b) can only be applied by persons who also qualify for hyper depreciation (point a) and invest in intangible operating assets (*e.g.* software for technological transformation) in the same period.

To benefit, the legal representative must produce a self-declaration issued pursuant to Presidential Decree no. 445 of 28 December 2000, or rather, for assets with a cost per unit of over €500,000, a technical appraisal certifying that the technological assets meet the indicated requirements is necessary.

Finally, it should be pointed out that provisions on depreciation do not affect the calculation of advance payments due for the tax year in progress as at 31 December 2017 or for the following year, which should be made on the basis of the tax that would have been calculated for the previous year without the benefit.

Annulment of payment orders (Articles 6 and 6-*ter* of Law Decree no. 193)

As anticipated in our Tax Alert dated 27th October 2016, article 6 and article 6-*ter* of Law Decree no. 193 of 22 October 2016 allow taxpayers to benefit from the scrapping of the rolls entrusted to the Debt Collector and the precepts issued by Italian Municipalities (*i.e.* 'Comuni') and others Local Authorities (and which will decide to take part in the scrapping) in the period between 1 January 2000 and 31 December 2016. The date of reference is therefore that on which the file was handed over to Equitalia (*i.e.* the Italian Debt Collector) or to the other authorities for registration in the roll or in case, the debt was entrusted without being registered in the roll, and not the date of notification of the payment order.

With reference to the rolls entrusted to the Debt Collector, debtors may extinguish their debt without having to pay any sanctions, interest on arrears (pursuant to article 30 of Presidential Decree no. 602/73) or deferred interest.

The only amounts due are capital, interest other than interest on arrears, collection fees (pursuant to article 17 of Legislative Decree no. 112/99), and the cost of any enforcement procedures.

With reference to the precepts issued by Italian Municipalities and other Local Authorities who do not use Equitalia for the forced collection, prior to their decision to take part in, these Authorities will have a 60-days term to approve proper guidelines to allow taxpayers to benefit from the scrapping of these precepts. In that case, the benefit would be only on sanctions, while interest on arrears would be still due.

This annulment applies regardless of who the creditor is and to not only all taxes (*i.e.* direct and indirect taxes), but also to INPS (*i.e.* Italian Social Security) and INAIL (National Insurance Institute for Industrial Accidents) contributions as well, along with contributions due to professional registers, local taxes (IMU, TARSU) and, in general, all amounts collected through a roll or precepts not registered in the roll.

To benefit, the taxpayer must submit a special application by 31 March 2017. The application form is available on the institutional website of the Debt Collector.

Once the application has been received, the Debt Collector will send notification, by 31 May 2017, of the amounts to be paid and, if applicable, the size of individual instalments and when these must be paid by.

Payment of the owed amounts for the scrapping of rolls may be made in one lump sum or, at the special request of the taxpayer, in a maximum of five instalments, on which deferred interest will be due at the rate of 4.5% annually. If payment is made in instalments, moreover, the instalments for 2017 must make up 70% of the total amount owed, with the remaining 30% for a maximum of two instalments must be paid by 30 September 2018. The expiry date for the 2017 instalments will be in July, September and November, while for the 2018 will be in April and September.

The procedure can be considered as settled when the entire amount has been paid, subject to it being paid in a timely manner.

Once the application has been submitted, the Debt Collector may not start any new precautionary or enforcement actions.

In express accordance with the law, the following violations are excluded:

— import VAT;

— amounts traditionally subject to the jurisdiction of the EU (*e.g.* customs duties);

— amounts owed in the recovery of State aid;

— credits arising from judgments handed down by the Court of Auditors (*i.e.* 'Corte dei Conti');

— fines, penalties and pecuniary sanctions issued as a result of measures and criminal convictions.

With reference to the latter, the pecuniary sanctions excluded are those which, despite being of an administrative nature, are issued as a result of criminal convictions (*e.g.* those issued under the responsibility of legal persons pursuant to Legislative Decree no. 231/2001).

3. Revaluation of business assets - (Article 1, par. 555 and following of the Budget Law)

Article 1 (555) of the Budget Law provides for a series of measures that make it possible to extend the deadlines for revaluating land and shares not owned by a company and to revaluate business assets, allowing the greater values resulting from revaluation to be registered in the financial statements.

More specifically, the Budget Law confirms, again for 2017, the possibility of re-calculating the cost of land and shares owned, outside the business, as at 1 January 2017.

More specifically, it is an optional regime that can allow tax savings in the event of transfers of revaluated goods, insofar as increasing the tax value of the asset reduces any capital gains.

To benefit, paragraph 555 provides for the payment of an 8% substitute tax to replace income taxes, to be paid both for the purpose of the revaluation of land and for the re-calculation of the value of any shares.

The substitute tax must be paid in one lump sum, by the deadline for paying the balance of the income taxes due for the tax period in reference to which the revaluation is carried out. The substitute debt may be offset by other tax credits through the F24 form.

With regard to the revaluation of business assets, paragraph 556 re-launches the special regime for the revaluation of business assets already provided for by the 2016 Stability Law. Furthermore, as has happened in the past for other revaluation measures, the Budget Law being considered also reiterates the main aspects of the provisions provided for by Law no. 342 of 21 November 2000.

Persons that can benefit from the new revaluation of business assets regime include joint-stock companies and resident commercial bodies (as long as they do not redraft the financial statements according to international IAS/IFRS accounting principles), resident cooperatives and mutual insurance companies, European companies and cooperatives, resident S.A.S. and S.N.C., non-commercial bodies and resident individual entrepreneurs (limited to assets belonging to the company). Furthermore, the revaluation also extends to the permanent establishments of non-resident persons.

Business assets and shares can be revaluated, more specifically:

— tangible and intangible assets, with the exclusion of any that are manufactured or exchanged by the company as part of its business activities;

— shares, constituting financial fixed assets, in subsidiaries or associates pursuant to article 2359 of the Italian Civil Code.

Revaluation may be carried out for assets listed above shown in the financial statements for the financial year in progress as at 31 December 2015, and must be registered in the following year's financial statements, the deadline for the approval of which is after the 1st January 2017 (therefore in the 2016 financial year, for calendar-year taxpayers).

The revaluation must obligatorily cover all assets belonging to the same category (identified based on article 4 of Ministerial Decree no. 162/2001), and must be made note of in the related inventory and explanatory notes.

Any credit balance resulting from the revaluation, due to greater values being registered, may be waived, entirely or partially, by the company that carried out the revaluation by applying a substitute tax of 10% instead of paying IRES/IRPEF, IRAP and any other additional taxes.

In the same way, the greater value attributed to the revaluated assets is recognised for the purpose of income tax, IRAP and related additional taxes from the third year following that for which the revaluation is carried out, through payment of a substitute tax:

— of 16% for depreciable assets;

— of 12% for non-depreciable assets.

The corresponding amount must be paid by the deadline for paying the balance of income taxes due for the tax period for which the revaluation was carried out.

In this regard, it should be pointed out that for tax purposes, any greater values registered in the financial statements following the revaluation of business assets are recognised, pursuant to paragraph 559, '*starting from the third financial year following that for which the revaluation was carried out*', or rather, from the financial year ended as at 31 December 2019, for calendar-year taxpayers.

Nonetheless, when it comes to the calculation of capital gains and losses, by virtue of paragraph 559 of article 1, the revaluated value becomes effective starting from the fourth financial year following that in which the revaluation was carried out (or rather, starting from the financial year ended as at 31 December 2020, for calendar-year taxpayers).

Limited to intangible assets, on the other hand, paragraph 563 provides for the recognition for tax purposes of any greater values registered in the financial statements '*starting from the tax period in progress as at 1 December 2018*'.

However, in the case of transfers for a consideration, or for purposes not related to a company's business activities, of assets revaluated on a date before that on which the fourth financial year following that in which the revaluation has been carried out starts, capital gains or losses must be calculated based on the cost of the assets before the revaluation. In such cases therefore, the revaluated value of the assets may not be used as a parameter of reference for calculating any capital gains or losses resulting from their transfer.

In the event of the distribution of the reserve to shareholders, the principle cited in paragraphs 3 and 5 of article 13 of Law no. 342/2000 shall apply, according to which:

— the amounts allocated to shareholders, plus the substitute tax on these amounts, contribute to forming the taxable income:
  - of the company or body;
  - of the shareholders.

— the person that carried out the revaluation is given a tax credit (for IRES/IRPEF purposes).

Indeed, to avoid unnecessary duplicate taxes, this tax credit may be deducted from the taxes owed on this greater capital gain.

Finally, the revaluation may also be carried out by persons who draft financial statements on the basis of international accounting principles, including in reference to shares in companies or bodies constituting financial fixed assets. For these persons, the amount corresponding to the greater values subject to realignment, net of the substitute tax, must be tied to an untaxed reserve. This reserve can be released through payment of a tax replacing IRES and IRAP and related additional taxes, of 10%.

4. Tax credit for research and development (Article 1 paragraphs 15-16 of the Budget Law)

Paragraph 15 amends the tax credit for research and development regime indicated in article 3 of Law Decree no. 145/2013, with effect starting from the tax period following that in progress as at 31 December 2016 (*i.e.* starting from 2017 for calendar-year taxpayers).

The changes, which combine to form a measure that benefits the taxpayer, are as follows:

— The tax credit will remain at 50% of all eligible expenses. The 25% credit is therefore repealed, and now reserved to just some investments;

— The maximum credit amount that each beneficiary can benefit from annually will go from €5 million to €20 million;

— The benefit will be extended to the tax period in progress as at 31 December 2020;

— The benefit will also apply to resident companies or the permanent establishments located in Italy of non-resident persons that carry out research and development activities under contracts signed with companies that are resident or located in other Member States of the European Union, in States that are part of the European Economic Area and in States with which the exchange of information indicated in Ministerial Decree of 4 September 1996 is possible; and

— Finally, with regard to how to benefit from the credit, it can be used to offset costs through the F24 form starting from the tax period following that in which the costs in question were incurred.

The minimum overall expense threshold for investments in research and development remains unchanged at €30,000 for each period.

5. ACE (Article 1, paragraph 550 of the Budget Law)

Article 1 (550) ushers in important changes on ACE, some of which will already apply to the tax period in progress as at 31 December 2016.

— A considerable reduction in the notional yield attributed to equity and relevant for ACE deduction purposes, which, for the tax period in progress as at 31 December 2017, will be 2.3%. Starting from the following tax period, the notional yield will be 2.7%.

— The introduction of another anti-avoidance measure for bonds and securities: paragraph 550 lett. d) states that '*for persons other than banks and insurance companies, an increase in equity shall not have any effect until it leads to an increase in the size of bonds and securities other than shares shown on the financial statements for the financial year in progress as at 31 December 2010*';

— The extension of the anti-avoidance regime provided for extraordinary transactions, when it comes to carrying forward previous losses and surplus non-deductible interest due to the ACE surplus indicated in paragraph 4 of Article 1 of Law Decree no. 201/2011.

— The repeal of the so-called 'Super-ACE' regime, or rather the increase by 40% of the ACE base for companies whose shares are listed on regulated markets or in the multilateral systems of EU Member States or States belonging to the European Economic Area.

— Changes to the method of calculating the equity to use to calculate the ACE yield for physical persons and partnerships, going from the entire net equity to just the increase on net equity as at 31 December 2010, starting from the tax period following that in progress as at 31 December 2015.

It should be pointed out that the regime will effect the calculation of advance payments for 2017, where the historical method is used.

6. Favourable supplementary tax returns (Article 5 of Law Decree no. 193/2016)

As anticipated in our Tax Alert dated 27th October 2016, one of the main changes enacted by Law Decree no. 193/2016, applicable starting from its entry into force (24 October 2016), concerns the so-called 'favourable' supplementary tax return regime, a change which overrides the restrictive approach recently taken by the United Sections of the Court of Cassation[(1)].

[(1)] The legislative framework set out by the Joint Sections of the Court of Cassation in judgment no. 13378 of 30 June 2016, stated that it was possible:

- for the taxpayer to submit a supplementary tax return in their favour only by the deadline given for submitting their tax return for the following tax period;

- for the taxpayer to submit an application for reimbursement of any taxes overpaid even after the year in question and within forty-eight months of the date on which payment was made pursuant to article 38 of Presidential Decree no. 602/1973;

- for the taxpayer, at any rate, to uphold any mistakes made in their favour during disputes to challenge the claims of the tax authorities.

In particular, article 5 of Law Decree no. 193/2016, amending article 2(8) of Presidential Decree no. 322/1998, establishes the principle according to which income tax returns (for CIT, IRAP, Regional income tax and WHT) can be supplemented to correct mistakes or omissions, including any that have led to the calculation of a greater income or, at any rate, a greater tax debt or smaller credit, through another return to be submitted by the deadline stipulated in article 43 of Presidential Decree no. 600/1973 (or rather, by 31 December of the fifth year following that in which the tax return was submitted[2]).

In practical terms, this means that starting from this year, taxpayers can submit supplementary tax returns in their favour for tax periods preceding 2015, 2011 included (for example, starting from 2011 if the supplementary return is submitted in 2016). This overrides the previous regime, under which a supplementary tax return in the taxpayer's favour could not be submitted after the deadline established for submitting their tax return for the following tax period.

Offsetting

Article 5 of the decree, amending article 2(8-*bis*) of Presidential Decree no. 322/1998, includes specific provisions on offsetting.

More specifically, it stipulates that any credit arising from a smaller debt or greater credit resulting from a supplementary tax return in the taxpayer's favour can be used to offset other amounts due, pursuant to article 17 of Legislative Decree no. 241/1997 (so-called 'horizontal offsetting'). Nevertheless, if the supplementary tax return in the taxpayer's favour is submitted after the deadline for submitting the tax return for the following period, the resulting credit can only be used to offset any debts accrued starting from the tax period following that in which the supplementary return was submitted.

Moreover, this new piece of legislation stipulates that the taxpayer must indicate, in their tax return for the period in which the amending return in their favour was submitted, the credit arising from the smaller debt or larger credit resulting from the supplementary return, as well as any amount of this credit that has already been used to offset other amounts[3]. Consider, for example, a supplementary return for the 2015 tax period which results in a larger credit and is submitted in 2018. In this case, the larger credit could be used to offset debts accrued from 2019 onwards, and the taxpayer must provide the information indicated above in the tax return for 2018.

Timeframes for assessment

The new law specifies that if a supplementary tax return is filed (regardless of whether the outcome is favourable or unfavourable to the taxpayer), the timeframe for assessment starts from when the return is submitted, but the assessment may only focus on elements in the supplementary return.

In this way, the legislator clarifies that submitting a tax return that supplements the original does not extend the deadline for assessing any income items that aren't included in the supplementary return.

Sanctions and voluntary corrections of tax returns

Article 2(8) stipulates that if a supplementary tax return is submitted, this shall be without prejudice to the application of any sanctions or the voluntary correction mechanism.

Nonetheless, in the event of a supplementary tax return in the taxpayer's favour, no sanctions shall apply to the taxpayer.

[2] The deadline of 31 December of the fifth year following that in which the return was submitted only applies for tax periods from 2016 onwards, whilst the period of assessment expires on 31 December of the fourth year following that in which the return was submitted for previous tax periods.

[3] It should be pointed out that for VAT purposes, if a supplementary tax return in the taxpayer's favour is submitted after the deadline for submitting the return for the following period, the resulting greater credit may not be used to offset any debts accrued starting from the tax period following that in which the supplementary return was submitted.

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