



Italy: Conversion of Law Decree no. 50/2017 - Corporate income tax measures

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Law Decree no. 50 of 24 April 2017⁽¹⁾ was converted into law on 15 June (though the new law - the 'Conversion Law' - is not in force yet). An outline of the main corporate income tax measures is given below.

1. Patent Box loses trademarks

The Conversion Law does not significantly alter article 56 of Law Decree no. 50/2017. Therefore, the updates to the Patent Box regime described in our [Tax Alert of 3 May 2017](#) are confirmed.

In brief, to align Italian tax law with the OECD guidelines contained in the final report on BEPS Action 5⁽²⁾, trademarks have been removed from the list of qualifying intangibles. The new rule applies to taxpayers who opt for the Patent Box regime after 31 December 2016 (i.e. for calendar-year taxpayers, the benefit is no longer available for income attributable to trademarks from 2017). Options exercised with respect to trademarks in tax years in progress on 31 December 2015 or 31 December 2016 have been grandfathered and will remain valid until their natural deadline (i.e. 2019 and 2020, respectively) or 30 June 2021 at the latest. A Ministerial Decree will update the implementation measures contained in the Decree of 30 July 2015⁽³⁾. As the Conversion Law leaves know-how in the list of qualifying intangibles, there is still some residual inconsistency with the OECD guidelines.

(1) Published in Official Gazette no. 95 of 24 April 2017 and in force since the same date.

(2) Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report, 5 October 2015, pp. 26-27.

(3) See our [Tax Alert of 3 November 2015](#).

2. Reduced rates for the allowance for corporate equity (ACE)

Italian resident companies (and permanent establishments of non-resident enterprises) can benefit from ACE, which is calculated by multiplying net equity increases since 31 December 2010 by a nominal rate of interest. The equity increases that qualify for ACE purposes include those resulting from (i) cash contributions, (ii) waivers of amounts owed by a company to its shareholders, and (iii) undistributed profits set aside to freely disposable reserves. The equity increases must be net of decreases resulting from distributions or assignments of shares to shareholders and certain decreases that have to be made for anti-avoidance purposes. The allowance is deducted from the company's net taxable income and, if in a given year it exceeds the company's net taxable income, the surplus can be carried forward indefinitely.

The ACE rates were 4 percent for 2014, 4.5 percent for 2015 and 4.75 percent for 2016. The Conversion Law reduces the ACE rates to 1.6 percent for 2017 (lower than the 2.3 percent fixed in the 2017 Budget Law) and 1.5 percent as of 2018 (instead of 2.7 percent fixed in the 2017 Budget Law). In calculating advance instalments of income taxes for 2017, using the historical method, taxpayers must use the new ACE rates when computing their 2016 income taxes, as if the new rates were already in force last year.

The Conversion Law has repealed proposed amendments to the ACE base; had the proposals gone through, the qualifying increase in net equity would have been measured against the company's net equity at the end of the fifth previous year.

3. Transfer pricing rule more OECD-compliant

Article 59 of Law Decree no. 50/2017 amends the Italian transfer pricing rule by replacing the concept of fair market value (*valore normale*) with a more direct reference to the arm's length criterion used in the OECD guidelines.

The Ministry of Economy and Finance will provide implementing rules and guidance on the application of the new rules, taking international best practice into account.

As a result of another new rule introduced by article 59, corresponding downward adjustments resulting in lower taxable income will no longer be conditional on a mutual agreement procedure (MAP) but will also be available:

- after international audits whose results are shared by the cooperating countries;

- upon receipt of an application from the taxpayer (in accordance with rules to be defined by the Italian tax authorities) following a final arm's length transfer pricing adjustment made by a country with which Italy has a tax treaty allowing an adequate exchange of information.

4. Cooperation and enhanced collaboration for multinational enterprises

Article 1-*bis* of Law Decree no. 50, added by the Conversion Law, introduces a special rule for MNEs, whereby certain non-resident enterprises may apply to the Italian Revenue Agency for a ruling, in order to verify whether their business activities in Italy may trigger a PE or voluntarily disclose the existence of a previously unreported PE. If a PE is deemed to exist, the applicant can follow a settlement procedure for the open fiscal years, paying the additional taxes and interest due, but lower penalties. No criminal consequences will ensue and, as an additional benefit, the applicant can automatically access the Italian cooperative compliance regime⁽⁴⁾.

Non-resident enterprises eligible to apply for a tax ruling are those that (i) belong to groups whose worldwide consolidated annual revenues top €1 billion, and (ii) have annual sales of over €50 million in Italy, obtained with the support of Italian entities belonging to the same group.

Though it seemed from the preparatory work within Parliament that the rule was meant to apply to enterprises of the digital economy, the final version is not narrowly worded and should also apply to industries operating outside the digital economy.

Implementing measures will be issued by the Italian Revenue Agency.

(4) For more information on the cooperative compliance regime, see our [Tax Alert of 13 July 2016](#).

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