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LEGISLATION

1.1
Law no. 136/2018 including "*Urgent provisions on tax and financial issues*" converting Decree law no. 119/2018 (Official Journal no. 293/2018)

Law no. 136/2018 – converting Decree Law no. 119/2018 – was published in the Official Journal no. 293 of 18 December 2018.

The Decree, as amended by the conversion law, has introduced significant provisions on tax amnesty.

We provide below the main changes; however, please refer to Tax Newsletter 16-31 October 2018 for further clarification on Decree Law no. 119/2018.

"*Definizione agevolata dei processi verbali di constatazione*" (Acceptance of findings raised in Tax Audit Reports without payment of penalties and interest) - article 1

Taxpayers may settle the position in respect of tax audit reports delivered by 24 October 2018 by filing the relevant return by 31 May 2019 in order to remedy any violations in respect of:
- income taxes (including income tax surcharges);
- social security contributions, withholding taxes;
- substitute taxes;
- IRAP;
- tax on the value of property abroad (IVIE);
- tax on the value of financial assets abroad (IVAFE);
- VAT.

The tax audit reports eligible for the advantage are those in respect of which no notice of deficiency has been served, or no summons to a meeting with the tax authorities has been received, by 24 October 2018.

The position is settled by filing the return and paying the full amount or the first instalment of the taxes

due by 31 May 2019; the taxes may be paid in a maximum of twenty equal instalments; the instalments subsequent to the first must be paid by the last day of each quarter.

No offsets between taxes due pursuant to article 17 of Legislative Decree No 241/1997 are allowed.

The statute of limitations for FYs until 31 December 2015 has been extended by 2 years.

"*Definizione agevolata degli atti del procedimento di accertamento*" (Acceptance of amounts claimed in notices of deficiency and similar instruments, of amounts stated in summons to meetings with the tax authorities and in settlement agreements, without payment of penalties and interest) - *article 2*

Notices of deficiency and similar instruments (*avvisi di accertamento, avvisi di rettifica/ liquidazione, atti di recupero crediti*) served by 24 October 2018 and not appealed against - but still appealable - at that date, may be settled by paying the taxes due, without penalties, interest and any ancillary charges, within 30 days from 24 October 2018, or by the deadline for filing an appeal, whichever is later.

The amounts stated in summons to meetings with the tax authorities ("*inviti al contraddittorio*") served by 24 October 2018 may be settled by paying the taxes due, without penalties, interest and any ancillary charges, within 30 days from 24 October 2018.

Articles 2 and 3 allow the possibility to conclude negotiated settlement agreements ("*accertamenti con adesione*") signed by 24 October 2018 by paying the taxes due, without penalties, interest and any ancillary charges, within 20 days from 24 October 2018.

The instruments issued as part of the voluntary disclosure procedure under article 5-*quater* of Decree Law No 187 of 28 June 1990, converted with amendments by law No 227 of 4 August 1990, are not eligible for the definizione agevolata incentive.

"Definizione agevolata" of the tax payment demands under collection by the tax collector's office - article 3

The following liabilities (other than in connection with own resources of the European Union) assigned

for collection to the tax collector's office between 1 January 2000 and 31 December 2017, may be settled without penalties, late-payment interest and any additional amounts (as prescribed by article 27(1) of Legislative decree no. 46/1999), by paying in full:

- principal and interest amounts;
- amounts due to the Tax collector's office as collection fees and reimbursement of enforcement procedure and process service costs.

In order to manifest its intention to benefit from the procedure, the Taxpayer will submit the relevant return (2018 DA form) by 30 April 2019.

The sums due may be paid in one amount by 31 July 2019 or in a maximum of eighteen consecutive instalments, of which the first two must be 10% of the sums wholly due and fall due on 31 July 2019 and 30 November 2019. The remaining instalments, in equal amounts will expire on 28 February, 31 May, 31 July and 30 November each year, starting from 2020.
In the event of payment by instalments, interest is due at the annual rate of 2% starting from 1 August 2019.

The late payment of the instalments by not more than 5 days does not result in the loss of efficacy of the "*definizione agevolata*" and no interest is due.

As a result of submitting the request to benefit from the procedure:

- the limitation periods shall be suspended;
- the payment obligations deriving from prior payment extensions in place at the date of the request shall be suspended – until the due date for payment of the first or sole instalment of the amounts due under *definizione agevolata*;
- no new *fermi amministrativi* [a measure whereby the taxpayer's vehicles are prohibited from circulating for a given period of time] and mortgages may be recorded, in addition to those already recorded at the date of filing the request;
- no new payment enforcement procedures may be initiated;
- any payment enforcement procedures previously initiated will have to be discontinued, unless the first auction was successfully completed;

- the debtor will not be considered to be in default;
- the provision of article 54 of Decree Law no. 50/2017 will apply for the purposes of issuing a DURC – *Documento unico di regolarità contributiva* (Certificate of regular social security payments).

Instead the following amounts shall not be eligible for *definizione agevolata:*

- sums claimed to recover State Aid;
- accounts receivable deriving from unfavorable decisions by the Italian supreme audit Court;
- fines and pecuniary penalties in connection with judgments in criminal matters;
- penalties other than those imposed in connection with tax and social security violations.

Forgiveness of debt of up to one thousand euro assigned to the tax collector's office for collection between the year 2000 and 2010 - article 4

Accounts payable of a remaining amount at 24 October 2018 of up to 1,000 Euro, including principal, interest and penalties, assigned for collection to the Tax collector's office between 1 January 2000 and 31 December 2010 (including those arising from tax payment demands in respect of which taxpayers have already applied for "*definizione agevolata*" (as prescribed by article 3 above) have been automatically forgiven at 31 December 2018.

With reference to the above mentioned accounts payable:

- sums paid prior to 24 October 2018 are considered as definitively paid;
- sums paid prior to 24 October 2018 are deducted from the outstanding instalments of other accounts payable eligible for the procedure or, if there were none, from any accounts payable either overdue or falling due shortly, or, if there were none, are reimbursed.

"Definizione agevolata" of amounts assigned to the tax collector's office for collection as own resources of the European Union – article 5

The tax liabilities assigned to the tax collector's office for collection between 1 January 2000 and 31 December 2017 in connection with the traditional own resources of the European Union and with VAT collected upon importation, may be settled in the manner and on the terms and conditions prescribed by the "*definizione agevolata*" procedure.

By 31 July 2019 the tax collector will notify the debtors on the aggregate amount of the sums due; the payment of the single or first instalment expires on 30 September 2019; the second instalment expires on 30 November 2019, while the remaining instalments expire on 31 July and 30 November of each subsequent year.

Incentive to the settlement of tax disputes - article 6

Disputes involving the Italian Revenue Agency concerning tax payment demands at any level of jurisdiction – including proceedings before the Italian Supreme Court and remand proceedings – may be settled, after the submission of a request by the entity which filed, or took over, or is legally entitled to file, an application originating proceedings, by paying an amount corresponding to the value of the dispute. The rule applies to disputes in respect of which the appeal to the provincial tax Court was notified to the counterparty by 24 October 2018 and the trial had not been concluded by a final decision at the date of the application for the *definizione agevolata* procedure. For each independent dispute, a separate application for *definizione agevolata* must be submitted by 31 May 2019 and a separate payment must be made; independent dispute means any dispute related to each single deed appealed against.

The regulation governs the following cases:

- in the event of a pending appeal before the local tax Court, the dispute may be settled by paying 90% of its value;
- if in the latest, or single, Court decision filed at 24 October 2018 the Revenue Agency was the losing party, the relevant disputes may be settled with the payment of:

40% of the value of the dispute, if the Tax Authorities lost the case before the Provincial tax Court;
15% of the value of the dispute, if the Tax Authorities lost the case before the Regional tax Court;

- if the appeal is partly upheld by the higher Court (and both the taxpayer and the Revenue Agency are partly losing parties), the amount of the tax, net of interest and fines, if any, is fully due as to the part the appeal that was upheld and is reduced in respect of the part of the appeal that was rejected;
- tax disputes pending at 24 October 2018 before the Italian Supreme Court, in which the Tax Authority lost before the Provincial and the Regional tax Court, may be settled by paying 5% of the value of the dispute;
- disputes in connection with penalties unrelated to a tax may be settled by paying 15% of the value

of the dispute, if the last, or the only, decision (filed at 24 October 2018) – on the merits or on the admissibility of the application originating proceedings – was unfavorable to the Revenue Agency, and 40% of the value of the dispute in all other cases;
- if a dispute is in place solely with regard to the penalties on additional taxes assessed which were settled in a different manner, such penalties are not due.

The *definizione agevolata* procedure is completed by filing the related application and paying the sums due, or the first instalment, by 31 May 2019. If the amounts due exceed 1,000 Euro, instalment payment may be made in a maximum of twenty quarterly instalments. The deadlines for payment of the instalments after the first are 31 August, 30 November, 28 February and 31 May of each year starting from 2019; the instalments after the first accrue interest at the legal rate between 1 June 2019 and the payment date. No offsets between taxes due pursuant to article 17 of Legislative Decree No 241/1997 are allowed.

The rejection of the *definizione agevolata* procedure must be notified by 31 July 2020 in the manner prescribed for the service of trial records and may be appealed against within sixty days to the Court before which the related dispute is pending.

Definizione agevolata does not apply to the disputes which, including partly, refer to:
- the traditional own resources of the European Union and VAT collected upon importation;
- sums claimed to recover State Aid (see article 16 of Council regulation (EU) no. 2015/1589).

Furthermore, as prescribed by par. 11 of article 6, with regard to eligible disputes, if the deadline for filing an appeal (including a secondary appeal) against court decisions (also in the event of remand) and for filing a counter-appeal before the Italian Supreme Court falls due between 24 October 2018 and 31 July 2019, it shall be suspended for a nine-month period.

Regularization of tax position by a voluntary payment for prior fiscal years - article 7

Amateur sports clubs and associations which at 31 December 2017 were registered with CONI (the Italian National Olympic Committee) may take advantage of the following:
- the *definizione agevolata* in respect of notices of deficiency and similar instruments (*atti del procedimento di accertamento*) by paying 50% of the additional taxes assessed, except VAT (which is due in full), and 5% of the penalties and interest claimed;

- the *definizione agevolata* of any outstanding tax litigation proceedings by paying:

1. 40% of the value of the litigation and 5% of the penalties and interest claimed if at 24 October 2018 the proceedings were outstanding before the provincial tax Court;
2. 10% of the value of the litigation and 5% of the penalties and interest claimed if at 24 October 2018 the latest, or the only, non-final Court decision issued was unfavorable to the Tax Authorities;
3. 50% of the value of the litigation and 10% of the penalties and interest claimed if at 24 October 2018 the latest, or the only, non-final Court decision issued was unfavorable to the sports club/association.

The *definizione agevolata* procedure cannot be adopted if the amount of the taxes assessed or under dispute, regarding each tax period, in respect of which a notice of deficiency has been issued (or a complaint or an appeal is pending) is higher than Euro 30,000 for each tax, either IRES or IRAP, assessed or under dispute.

"Definizione agevolata" of consumption tax due pursuant to article 62-quater(1) and (1-bis) of legislative decree No 504 of 26 October 1995 - article 8

The Decree introduced the possibility for persons liable to consumption tax (see article 62-*quater* (1) and (1-*bis*) of the of Legislative Decree no. 504/1995) – unless a final court decision has been issued – to qualify for the beneficial treatment under the definizione agevolata procedure by paying 5% of the tax due and not paid, without penalties and interest.

Taxpayers shall inform the Italian Customs and Excise Authority of their intention to benefit from the regime by submitting the relevant return by 30 April 2019; such submission suspends for ninety days the deadline for filing an appeal against tax payment demands, consumption tax payment demands and decisions issued in this respect.

The *definizione agevolata* procedure is completed by paying within sixty days the entire amount notified by the Authority, or the first instalment (if payment in monthly instalments is to be made).

Formal non-compliance - article 9

In accordance with this provision, introduced following the conversion into Law of Decree Law No

119, non-compliance with and infringement of formal obligations and requirements (not affecting the determination of the taxable base for income taxes, VAT and IRAP and the payment of taxes) committed until 24 October 2018 may be remedied by paying Euro 200 for each tax period to which the violations refer in two equal instalments by 31 May 2019 and 2 March 2020.

This procedure is completed when the sums due are paid and the irregularities and failures are remedied.

The procedure is not available for:

- deeds of notification of disputes or notices of penalties charged issued as part of the voluntary disclosure procedure;
- formal violations already claimed in instruments which became final at 19 December 2018 (date of entry into force of Law No 136).

Moreover, the procedure is not available for the disclosure of financial assets and property acquired or held outside Italy.

Provisions on e-invoicing - articles 10, 10-bis, 10-ter, 15 and 15-bis

Law no. 136/2018 has amended article 1 of Legislative Decree no. 127/2015 on e-invoicing and the electronic transmission of invoices and related information as regards:

- the exemption regime (taxpayers which have earned proceeds of up to Euro 65,000 from the conduct of a commercial business are exempted from the provisions on e-invoicing);
- the penalty regime in the event of non-compliance with the e-invoicing obligation (see par. 6 of article 1 of Legislative Decree no. 127/2015), with specific reference to taxpayers carrying out the monthly VAT settlement, which, until 30 September 2019, are subject to the provisions at issue – for the first semester of 2019 – on the failure to apply fines or on the application of fines with a 80% reduction.

The law has also introduced certain provisions simplifying e-invoicing for healthcare professionals, as well as specific provisions for public utilities companies.

As regards article 15 on the coordination of e-invoicing, please note that starting from 2020 VAT operations, within the scope of an online assistance program based on the information collected by way of e-invoices and the notifications of cross-border transactions, as well as on the electronically collected information

on payments received by retailers, the Revenue Agency will make the draft VAT ledgers, VAT settlements and annual VAT return available to all VAT taxable entities resident and established in Italy.
The new provisions introduced refer to the following:

- digital tax justice (*articles 16 and 16-bis*);
- automatic exchange of information (article 16-*sexies*);
- extension of the VAT group to Cooperative Bank Groups (article 20);
- temporary suspension of capital losses on trading securities (article 20-*quater)*. Entities not adopting the International Accounting Standards in the FY ongoing at 24 October 2018 may recognize trading securities at their book value – shown in the last annual Financial Statements duly approved – instead of market value, except for impairment losses. In view of the turbulence of financial markets, this provision may be extended to the subsequent FYs;
- tax on the transfer of funds abroad through paying entities, pursuant to article 114-*decies* del Legislative Decree No 385/1993 (article 25-*novies*);
- consumption taxes, as prescribed by Legislative Decree no. 504/1995 (article 25-*decies*);
- amendment to the threshold for eligibility to tax ruling requests on new investments (article 01): the new wording of article 2(1) of Legislative Decree no. 147/2015 prescribes that enterprises which want to make investments in Italy amounting to not less than Euro 20,000,000 and having a long lasting and significant impact on employment may submit to the Revenue Agency a tax ruling request on the tax treatment of their investment plan and any corporate reorganizations which might be implemented for its implementation (including, if necessary, the evaluation as to the existence of business).

1.2
Legislative decree no. 142 of 29 November 2018, named "*Implementation of Council directive 2016/1164 (EU) dated 12 July 20016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, as amended by Council directive 2017/952 (EU) dated 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries*" – Italian Official Journal no. 300 dated 28 December 2018

Legislative Decree no. 142/2018 implementing Council directive no. 2016/1164 dated 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of internal market and as amended by Council directive no. 2017/952 (EU) dated 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, was published in the Official Journal no. 300 dated 28 December 2018 – so-called ATAD 1 and ATAD 2 directives of the European Commission's Anti-Tax Avoidance Package ("*the Decree*").

In general terms, the objective of the Directives is to strengthen the protection level of internal rules against aggressive tax planning and ensure that tax is paid where profits and value are generated, in compliance with the OECD Action Plan on BEPS - Base Erosion and Profit Shifting.

As specified in the Explanatory report, the Decree contains the rules implementing the ATAD 1, which are adopted based on the fact that the Italian tax system already includes provisions regarding the specific fields covered by ATAD 1, with the exception of rules against hybrid mismatches. In view of the foregoing, no provision has been issued in respect of the general rule on anti-abuse since the current wording of article 10-*bis* of Law no. 212/2000 (Taxpayers' bill of rights), including the rules on the abuse of law or tax avoidance, is compliant with the wording of article 6 of the ATAD 1.

The Decree is divided into six chapters:

- Chapter I (Provisions on the deductibility of interest expense);
- Chapter II (Provisions on exit taxation);
- Chapter III (Provisions on controlled foreign companies);
- Chapter IV (Provisions on hybrid mismatches);
- Chapter V (Coordinating definitions and provisions);
- Chapter VI (Transitional and final provisions).

The newly introduced provisions refer to:

- the deductibility of interest expense;
- exit and entry taxation;
- Controlled Foreign Companies - CFCs;
- dividends and capital gains related to shareholdings in foreign entities;
- hybrid, reverse hybrid and tax residency mismatches;
- the definition of financial intermediaries, financial and non-financial holding companies.

Deductibility of interest expense

Starting from 1 January 2019, the Decree significantly amended article 96 of Italian Income Tax Code ("*Interest expense*") as follows:

- extension of the deductibility limits also to capitalized interest expense and similar financial costs (the

term "*interest income*" and "*interest expense*" shall include equivalent financial income and costs). As specified in the Explanatory report, this will require a verification of the deductibility of such interest in the FY in which recorded and capitalized, resulting in its possible full or partial non-deductibility; however, the book value of the asset on which the interest was capitalized will be fully recognized for tax purposes;

- deductible interest expense will be measured not only against the interest capacity of the tax period, but also any unused interest capacity carried over from previous tax periods, in order to take into account situations where there may be periods characterized by unused interest capacity followed by tax periods characterized by non-deductible.

Eligible interest pursuant to article 96 of Italian Income Tax Code, is interest from financial transactions or contractual relationships or from transactions or contractual relationships which contain a significant financial component (e.g., the interest income or interest expense recorded pursuant to IFRS 15 in the event of payment extensions granted to or advance payment made by a customer).

The new rules on interest expense deductibility apply to interest income and interest expense, which are characterized as such by the Accounting Principles adopted by the company; in this respect please see the Final Report on BEPS Action 4 ("*Limiting Base Erosion Involving Interest Deductions and Other Financial Payments*"), which clarifies that the deductibility limits of interest expense must apply, besides to interest expense regarding any type of debt, also to the other "*financial payments*" which are economically equivalent to interest expense, since it must be verified their equivalence based on the economic substance and not legal status.
Article 96(2) of the Italian Income Tax Code provides that interest expense and similar financial costs in excess of the interest capacity (i.e., interest income and similar financial proceeds for the tax period and carried over from previous tax periods) are deductible up to the amount corresponding to the sum of 30% of the Gross operating income (*Risultato Operativo Lordo*) for the year and 30% of the GOI carried over from previous tax periods. To this end, the taxpayer will use first the gross operating income for the year and subsequently the gross operating income from prior years, starting from the less recent tax periods.

The key change is that the Gross operating income may be carried over for five fiscal years (and not indefinitely, as in the past). Moreover, the extraordinary income and costs from the transfer of businesses or business concerns are no longer excluded from the Gross operating income.

Another change is that the Gross operating income will be determined having regard to the values of the relevant items used in the determination of taxable income ("*ROL fiscale*"), instead of the book values of the same items ("*ROL contabile*") (for instance, i.e. telephone costs will not fully be taken into account but solely as to 80% of their amount, which is the tax deductible percentage). In the event that both book values and tax bases are utilized, the relevant values are those prescribed by the tax regulations.

As prescribed by article 96(6) of the Italian Income Tax Code, if in a tax period the amount of interest income and similar financial costs is higher than the sum of interest expense and similar financial costs carried forward from previous tax periods, the unused interest capacity be carried over to the subsequent tax periods, with no time limit.

On certain conditions, interest on loans taken out to fund a long-term public infrastructure project – as defined in the Italian Code of Contracts – is not subject to the limitations on deductibility.

Interest expense incurred by insurance companies and ultimate holding companies of insurance companies, as well as by management companies of investment funds and investment firms, is 96% deductible.

Article 96(14) describes the deductibility of interest expense within the domestic tax group pursuant to articles 117 ff of the Italian Income Tax Code. Furthermore, article 13 stipulates a number of transitional provisions.

Provisions concerning "exit" and "entry" taxation.

Article 2 of the Decree regulates "*exit*" taxation (article 166 of the Italian Income Tax Code), while article 3 regulates entry taxation (article 166-*bis* of the Italian Income Tax Code). In general terms, the new legislation has a broader scope of application and introduces a new notion of market value to be applied consistently throughout the EU (replacing Italy's "*valore normale*") for the determination of any capital gains arising from the transfer outside Italy (exit) and into Italy (entry).

As regards, *inter alia,* the taxation of any capital gains arising from the transfer, the revised article 166 of the Italian Income tax code applies – with effect from 1 January 2019 – to persons carrying on a business

who:

1. are tax resident in Italy and transfer their tax residence abroad: in this case the capital gains are determined as the difference between the market value and the tax bases of the assets and liabilities which were transferred (other than to a Italian permanent establishment of the transferor);
2. are tax resident in Italy and transfer assets to a foreign permanent establishment which qualifies for the Branch exemption regime (tax exemption of profits and losses) pursuant to article 168-*ter* of the Italian Income Tax Code: the taxable capital gain is the difference between the market value and the tax bases of the assets and liabilities which were transferred to the foreign permanent establishment;
3. are tax resident abroad, have an Italian permanent establishment and transfer the latter to the head office or to another foreign permanent establishment: the taxable capital gain is the difference between the market value and the tax bases of the assets and liabilities of the permanent establishment transferred to the head office or to the foreign permanent establishment;
4. are tax resident abroad, have an Italian permanent establishment and transfer some of the latter's assets to the head office or to another foreign permanent establishment: the taxable capital gain is the difference between the market value and the tax bases of the assets transferred to the head office or to the foreign permanent establishment;
5. are tax resident in Italy and have either been merged into a non-resident company or carried out a demerger to the benefit of one or more non-resident companies or contributed a foreign permanent establishment, or a division thereof, to a foreign-resident entity: the capital gain is the difference between the aggregate market value and the tax bases of the assets and liabilities which before the corporate reorganization were included among the assets of the Italian tax resident person and which after the reorganization were not transferred to the Italian permanent establishment of a non-resident person.

The transfer of assets to or from a permanent establishment is considered made when, pursuant to OECD principles (where the PE is regarded as a separate and independent entity which carries out the same activities as or similar activities to its head office, in the same or similar conditions and having regard to the functions performed, risks assumed and assets used) these assets are deemed to "*enter*" or to "leave" the permanent establishment.

The taxes due may be paid, at the taxpayer's option – and subject to the provision of adequate guarantees – in five annual equal instalments if the taxpayer's tax residence (point 1 above) is transferred to an EU

member state or an EEA Country which allows an adequate exchange of information and with which Italy entered into an Agreement concerning mutual assistance for the recovery of claims, comparable to that offered by Directive 2010/24/EU. If this condition is met, also in the cases described under points from 2 to 5 above, the taxes due may be paid, at the taxpayer's option – and subject to the provision of adequate guarantees – in five annual equal instalments.

Article 166-*bis* of the Italian Income Tax Code (*"Entry tax bases"*) regulates the following cases:

1. a person which carries out a commercial business transfers its tax residence to Italy;
2. a person which is resident for tax purposes abroad transfers assets to its Italian permanent establishment;
3. a person which is resident for tax purposes abroad transfers a business concern to Italy;
4. a person which is resident for tax purposes in Italy and has a foreign permanent establishment qualifying for the branch exemption regime pursuant to article 168-*ter* of the Italian Income Tax Code, transfers to the head office some of the PE's assets;
5. a person which is resident for tax purposes abroad and which carries on a business, is merged into a person which is resident for tax purposes in Italy or makes a demerger to the benefit of one or more resident companies or contributes a foreign permanent establishment to an Italian resident entity.

In the above cases, the tax bases of the assets and liabilities of the entity which transferred its tax residence to Italy, of the assets and liabilities of the entity which was merged or demerged or the PE transferred, of the assets transferred to the Italian PE of the non-resident person and those transferred from the foreign PE to the Italian head office, shall be their market value if, before the change of residence, the foreign entity was resident for tax purposes in an EU Member State or a Country which allows an adequate exchange of information (article 11(4)(c) of legislative decree no 239 of 1 April 1996).
If, in any of the above cases, the person involved in the transfer is based in a non-EU jurisdiction, or in a Country which does not allow an adequate exchange of tax information, the tax bases shall be the market values determined as a result of the advance arrangement entered into with the Italian Tax Authorities pursuant to article 31-*ter* of Presidential Decree No 600 of 29 September 1973 (governing advance arrangements for enterprises with international business). If no such arrangement is entered into, the tax bases of the assets and liabilities shall be the lower of purchase cost, book value and market value for assets and the higher of purchase cost, book value and market value for liabilities.

As concerns "*entry*" transfers, the market value shall be established based on the conditions and prices agreed between independent players in free market conditions and in comparable circumstances, having regard – for businesses or business divisions – to the goodwill calculated in accordance with the functions and risks transferred. In determining the market value, account shall be taken of the instructions contained in the Finance Ministry Decree issued pursuant to article 110(7) of the Italian Income Tax Code.

The transfer of assets to or from a permanent establishment is considered made when, pursuant to OECD principles (where the PE is regarded as a separate and independent entity which carries out the same activities as or similar activities to its head office, in the same or similar conditions and having regard to the functions performed, risks assumed and assets used) these assets are deemed to "*enter*" or to "*leave*" the permanent establishment.

The manner in which the values of the assets and liabilities involved in the transaction are to be reported will be established by a specific Enactment. If the values are not reported, or incomplete values are reported, the administrative penalties prescribed by article 8(3-*bis*) of Legislative Decree No 471 of 18 December 1997 apply (i.e., 10% of the aggregate costs and expenses not reported in the Income Tax Return, from a minimum of Euro 500 to a maximum of Euro 50,000).

Provisions concerning controlled foreign companies

Section I of Chapter III transposed into Italian legislation articles 7 and 8 of Directive (EU) 2016/1164 on Controlled Foreign Companies (CFCs). As a result, with effect from 1 January 2019, article 167 of the Italian Income Tax Code was replaced with a new wording in line with the Directive. CFC rules apply to resident entities regardless of their legal form (partnerships, corporations or natural persons) which control companies resident or based in black-listed jurisdictions.
Non-resident companies, enterprises or entities are deemed to be controlled if either of the following conditions is met:

- they are directly or indirectly controlled, including through a fiduciary company or a third party (pursuant to article 2359 of the Italian civil code), by a resident entity;
- more than 50% of the non-resident entity's profits are directly or indirectly held by a resident person, through one or more controlled companies (pursuant to article 2359 of the Italian civil code), or through a fiduciary company or a third party.

Furthermore, pursuant to CFC rules, foreign PEs of CFCs and foreign PEs of resident entities which opted for the Branch Exemption regime pursuant to article 168-*ter* of the Italian Income Tax Code are regarded as controlled foreign companies.
Pursuant to article 167(4) of the Italian Income Tax Code, CFC rules apply if non-resident controlled entities meet the following conditions:

- their effective tax rate must be lower than half the tax rate the company would have been liable to had it been resident in Italy (thus, in order to identify a black-listed jurisdiction, the focus is on the effective, rather than nominal, tax rate);
- over one third of the income realized by the CFC consists of passive income, namely:

1. interest or other income from financial assets;
2. royalties or other income generated by intellectual property;
3. dividends and income from the disposal of equity interest;
4. income from finance lease transactions;
5. income from insurance, banking or other financial activities;
6. income from the sale and purchase of assets with low or no economic value added, carried out with entities that directly or indirectly control, are controlled by or are under mutual control with the non-resident entity;
7. income from services with little or no value added rendered to entities that directly or indirectly control, are controlled by or are under mutual control with the non-resident entity; services with little or no value added are those referred to in the instructions of the Finance Ministry Decree issued pursuant to article 110(7) of the Italian Income Tax Code.

The issue here is the comparison between the "*effective*" foreign tax rate and the domestic "*notional*" tax rate calculated by applying Italian tax rules on the pre-tax income of the CFC.
Pursuant to article 167(5) of the Italian Income Tax Code, CFC rules do not apply when the resident taxpayer is able to demonstrate that the foreign controlled company carries out a real business activity using personnel, equipment, assets and premises; it is possible to file a ruling request to demonstrate that this is case (as provided by article 11(1)(b) of law No 212 of 27 July 2000).
The CFC's income is attributed to the controlling entity in the fiscal year ongoing at the CFC's year-end in proportion to its percentage of (direct or indirect) ownership.
In the event of indirect ownership through resident entities or Italian PEs of non-resident entities, income will be attributed to each of these entities in proportion to their respective percentage of ownership.

The income realized by the controlled foreign company to be attributed to the resident controlling entity on a flow-through basis is subject to separate taxation at the average tax rate of the resident controlling entity, which may not be lower than the regular IRES corporation tax rate (24%). Such income is determined in accordance the IRES rules applying to resident companies, with the exception of the provisions on:

- convenience companies;
- companies constantly in a loss position;
- industry studies;
- aid to economic growth;
- taxation of capital gains on instalments (article 86(4) of the Italian Income Tax Code).

As specified in the Explanatory Report to the Decree, this ensures greater equivalence between the taxable amount of the foreign-source income attributed to the Italian shareholder on a flow through basis and the taxable amount of the same income had this been sourced in Italy.
In the audits which will be conducted to ascertain the correct application of CFC legislation, before issuing a notice of deficiency the Revenue Agency will have to allow taxpayers a 90-day term to submit proof that the legislation does not apply (in accordance with the safe harbor provision). Furthermore, there is an obligation to report in the Tax Return shareholdings which may be subject to CFC legislation in the event that no ruling request was submitted to the Revenue Agency or, if it was, an unfavorable ruling was issued.

Income from non-resident collective investment undertakings is subject to tax in the hands of the resident controlling entity if and to the extent that such income would have been liable to tax had it been generated by an Italian-resident collective undertaking.

Rules on dividends and capital gains

Section II of the Decree amended the provisions of the Italian Income Tax Code (e.g., arts 47, 87 and 89) concerning dividends and capital gains from shareholdings in non-resident entities. Moreover, the new article 47-*bis* ("*Provisions concerning low-tax jurisdictions*") stipulates that states or territories, other than EU member states or EEA Countries with which Italy entered into an Agreement allowing an adequate exchange of information, are considered low-tax jurisdictions if:

- their effective tax rate is lower than half the rate applicable in Italy, where the enterprise or entity, not resident or not established in Italy, is controlled by a shareholder resident or based in Italy (according

to the definition provided by article 2359 of the civil code) or holds a profit sharing percentage exceeding 50%);

- the nominal tax rate is lower than half the rate applicable in Italy (if there is no control).

As specified in the Explanatory Report to the Decree, the new article 47-*bis* introduced a different condition for the identification of low-tax jurisdictions – effective or nominal tax rate – depending on whether the resident shareholder owns a controlling or a non-controlling equity interest, in line with the notion applicable under CFC legislation. The different treatment derives from the need to provide a simplification – nominal tax rate – for non-controlling shareholdings since their holders would have greater difficulties in obtaining the information required to determine the effective tax rate.

There are two cases in which the rules on low-tax jurisdictions do not apply:

a)the non-resident subsidiary carries out a real business activity using personnel, equipment, assets and premises; or

b)as a result of holding the equity interest, the resident shareholder does not shift profits to black-listed jurisdictions.

Other major changes include the following:

- the tax treatment of capital gains from the sale of significant or non-significant shareholdings in listed companies based in black-listed jurisdictions is the same;
- with regard to the capital gain tax exemption regime, fulfilment of the condition under article 47-*bis*(2)(b) (i.e., as a result of holding the equity interest, the resident shareholder did not shift profits to black-listed jurisdictions) must be ascertained having regard to a maximum 5-year monitoring period, and solely with respect to the fiscal years in which the country is regarded as a low-tax jurisdiction;
- as regards profits from companies based in black-listed jurisdictions received by IRES taxable persons (article 89 of the Italian Income Tax Code), the prior rules apply (taxation of 50% of the dividends received) if the safe harbor rule under article 47-*bis(*2)(a) of the Italian Income Tax Code is met (i.e., the non-resident subsidiary carries out a real business activity using personnel, equipment, assets and premises). The domestic recipient of the interest is entitled to a tax credit pursuant to article 165 of the Italian Income Tax Code. If the fair taxation test is met, dividends are taxable only as to 5% of their amount; since the first year of ownership of the shareholding, the resident taxpayer must be able to demonstrate – including by filing a tax ruling request – that as a result of holding the equity interest,

he did not shift profits to black-listed jurisdictions;

- if the conditions for the application of CFC legislation exist, the option for the Branch Exemption regime is conditional on proving that a real business activity is carried on, using personnel, equipment, assets and premises (safe harbor rule under article 167(5) of the Italian Income Tax Code).

The above provisions apply to dividends and capital gains realized as of the fiscal year subsequent to that ongoing at 31 December 2018.

Hybrid mismatches

Consistently with the OECD's BEPS Project, the new anti-hybrid measures are designed to avoid double taxation or deduction without inclusion resulting from conflicts (i.e., mismatches or different tax treatment) in the characterization of financial instruments, payments, entities, permanent establishments, or from payment allocations.

The relevant OECD Reports for hybrid mismatches are the 2015 Report "*Neutralising the Effects of Hybrid Mismatch Arrangements*" and the 2017 Report "*Neutralising the Effects of Branch Mismatch Arrangements*".

ATAD 1 – Directive (EU) 2016/1164 – introduced some rules against hybrid mismatches. The Directive's Whereas (13) emphasizes the need to extend the scope of the anti-hybrid provisions to include, for instance, hybrid mismatches involving at least one Member State: "*It is critical that further work is undertaken on hybrid mismatches between Member States and third countries, as well as on other hybrid mismatches such as those involving permanent establishments.*"

Whereas (28) of the ATAD 2 – Directive (EU) 2017/952 – states that in implementing the Directive, Member States should use the applicable explanations and examples in the OECD BEPS report on Action 2 ("*Neutralising the Effects of Branch Mismatch Arrangements*").

Specifically, the goal of the new Italian anti-hybrid legislation is to avoid cross-border mismatches involving:

- a "*double deduction*" of the same cost in both the payer's and the investor's jurisdiction, or:
- a "*deduction without inclusion*", i.e. the deduction of a payment or deemed payment between the head office and permanent establishment or between two or more permanent establishments in any jurisdiction in which that payment or deemed payment is treated as made (payer jurisdiction) without a corresponding inclusion for tax purposes of that payment or deemed payment in the payee jurisdiction.

These measures apply to all Italian IRES taxpayers, including Italian permanent establishments of non-resident enterprises.

Article 8 of the Legislative Decree introduced, *inter alia*, the following measures against hybrid mismatches:

1. In the event of a double deduction pursuant to an agreement between related parties or a structured arrangement, the deduction of the cost by the Italian taxpayer (either the payer or the investor) is disallowed;
2. In the event of deduction without inclusion pursuant to an agreement between related parties or a structured arrangement, either the deduction of the cost is disallowed or the income is included in the taxable basis (depending on who the Italian taxable person is).

Articles 9 and 10 of the Decree deal with reverse hybrid mismatches and tax residency mismatches (where the taxable person has a dual residence for tax purposes). In particular, article 9 contains a measure against "*deduction without inclusion*" as a result of the attribution of income to entities that are considered both pass-through and non-pass through entities.

The rules apply with effect from the fiscal year subsequent to that ongoing at 31 December 2019; the new reverse hybrid rules will apply as of the fiscal year subsequent to that ongoing at 31 December 2021.

Financial intermediaries

Chapter V contains definitions and coordinating provisions to establish the nature of financial intermediaries and of financial and non-financial holding companies which are subject to specific provisions (including interest deductibility) of the ATAD.

The recent changes reflect the impact of the reform in the field of financial players; started by Legislative Decree No 141 of 13 August 2010 and completed by Legislative Decree No 136 of 18 August 2015, implementing Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of banks and other financial institutions. As a result, the new definition of financial intermediaries applies to all tax provisions which refer to them.

The newly introduced Article 162-*bis(*1)(a) of the Italian Income Tax Code provides the following definition of financial intermediaries:

1. the entities authorized to make loans to the general public, pursuant to article 105 of the of the Italian consolidated banking act (Legislative decree No 385 of 1 September 1993) - supervised by the Bank of Italy and required to keep financial statements in accordance with Bank of Italy's instructions and

with the IAS/IFRS – and other persons having an Italian permanent establishment with the same characteristics;

2. credit guarantee consortia and microcredit players (articles 112-*bis* and 111 of the Italian consolidated banking act);
3. entities which are exclusively or mainly engaged in the acquisition of shareholdings in financial intermediaries, other than those mentioned under point 1 above.

Paragraph 1(b) defines financial holding companies as entities which are exclusively or mainly engaged in the acquisition of shareholdings in financial intermediaries. Paragraph 1(c) defines non-financial holding companies (and similar entities) as entities which are exclusively or mainly engaged in the acquisition of shareholdings other than in financial intermediaries, or which carry out activities other than *vis-à-vis* the general public.

Paragraphs (2) and (3) of Article 162-*bis* of the Italian Income Tax Code specify that such companies are considered to be solely or mainly engaged in the acquisition of shareholdings in financial intermediaries (or other entities) when the total shareholdings recorded in the latest approved financial statements, and other balance sheet assets including commitments to pay funds and any guarantees given, exceed 50% of the balance sheet assets of such financial intermediaries (or other entities).

The new definitions of intermediary for IRES and IRAP apply with effect for the fiscal year ongoing at 31 December 2018.

Article 14 of the Legislative Decree abrogated article 179(6) of the Italian Income Tax Code - "*Tax neutral regime*" – with effect from the fiscal year subsequent to that ongoing at 31 December 2018, as a result of the changes to article 166 of the Italian Income Tax Code on exit taxation (article 170(6) concerned the exit taxation of business assets or business concerns which, as a result of corporate reorganizations, were not transferred to an Italian permanent establishment).

1.3
Law No 145 of 30 December 2018 - 2019 Budget and three-year budget for the period 2019-2021 (Italian Official Journal No 302 of 31 December 2018)

Law No 145 of 30 December 2018 (*2019 Budget and three-year budget for the period 2019-2021*) was

published in the Italian Official Journal No 302 of 31 December 2018.

The Finance Act 2019 law abrogated the Aid to economic growth and *IRI - Imposta sul reddito di impresa,* the tax on business income – article 1(paragraphs 1080 and 1055). We summarize below the other main changes to direct and indirect tax legislation.

Reduced taxation in connection with reinvested profits and new hires (article 1, paragraphs 28-34)

Effective from 2019, the net aggregate income reported by the corporations and entities referred to in article 73 of the Italian Income Tax Code may be subject to 15% IRES as to the portion corresponding to the profits for the year prior to that in respect of which a return was filed, generated in the conduct of business and allocated to reserves other than non-distributable retained earnings, up to the amount corresponding to the sum of:

- investments in new capital assets;
- personnel costs in connection with employees under a fixed- or indefinite- term agreement.

The following shall be considered investments for the purposes of the incentive: a) the creation of new plants in Italy; b) the completion of suspended works; b) the expansion, restarting and renovation of existing plants; c) the purchase or finance lease of new capital assets for facilities located in Italy. Investments in real estate and vehicles - referred to in article 164(1)(b-*bis*) of the Italian Income Tax Code - do not qualify for the incentive.

In each fiscal year, personnel costs shall be relevant if, for the most part of the fiscal year, the staff is assigned to work in productive structures located in Italy and the aggregate number of employees engaged in commercial activities has increased compared to the number of employees on payroll at 30 September 2018, having regard to any decreases in the number of staff hired by subsidiary or related companies or others companies related (including through a third party) to the same person.

For companies which are members of a domestic tax group, the amount qualifying for the reduced 15% IRES rate must be used by the controlling company or entity up to the amount of income in excess of any losses decreasing the taxable income. This provision applies also if the option for Worldwide group taxation has been elected (articles 130 to 142 of the Italian Income Tax Code).

If a company has opted for pass-through status, the amount qualifying for the reduced IRES rate is attributed to each member proportionally to their respective profit sharing percentage.

The relief may be cumulated with other incentives, except those which provide for the determination of income on a lump-sum basis.

Web tax – article 1(35) to (50)

A tax on digital services (Web Tax) will apply to entities conducting a business, which, individually or as a group, generate:

- total worldwide revenue of no less than Euro 750,000,000; and
- revenue from digital services generated in Italy of at least Euro 5,500,000

in any calendar year.

The tax is charged at 3% of the taxable revenue realized by the taxable person in each quarter. The relevant services are:

- dissemination of advertising content on a digital interface meant for users of such interface;
- providing a multilateral digital interface for users to be in contact and interact with one another, inter alia to facilitate the direct provision of goods and services;
- transmission of data gathered by users and generated by the use of a digital interface.

Taxable revenue shall be taken into account before deduction of costs and not including VAT and other indirect taxes; revenue is considered taxable in any fiscal year when the user of a taxable service is located – as provided by article 1(40) – in Italy during such period. Revenue generated from the above services rendered to entities controlling, controlled by or under common control with the same controlling entity, shall not be taxable.

Taxable persons are liable for payment within the month subsequent to each quarter and must file the annual return for the taxable services rendered within four months from the year-end. A Ministerial Decree may provide that – with regard to companies that are part of the same group – a single group company may be appointed to meet the web tax obligations.

Non-resident entities without an Italian permanent establishment and not registered for VAT in Italy, which

meet the conditions for the Web Tax in a fiscal year, will have to apply for a special-purpose identification number from the Italian Revenue Agency (Agenzia delle Entrate).

Their resident related parties are jointly liable with them for the obligations deriving from the web tax rules.

Tax credit for "Training 4.0"- article 1(78-81)

The tax credit for employee training in the technology sector under the National Industry plan 4.0 (*Piano nazionale industria 4.0* - article 1, paragraphs 46 to 55 of law no 205 of 27 December 2017) also applies to training costs incurred in the fiscal year subsequent to that ongoing at 31 December 2018.

The tax credit – capped to Euro 300,000 p.a. – is granted as to:

- 50% of the eligible costs incurred by small-sized enterprises and;
- 40% of the eligible costs incurred by medium-sized enterprises.

Large-sized enterprises, as identified by Annex I to Commission Regulation (EU) 651/2014 of 17 June 2014, are entitled to a tax credit corresponding to 30% of the eligible costs, up to a maximum credit of Euro 200,000 p.a.

Eligible activities are all activities in connection with providing training to the company's employees in order for them to acquire or strengthen their skills in the use of the technology relevant for the technological and digital transformation process of companies provided by the «*National Industry plan 4.0*». They include the following:

a) big data and data analysis;
b) cloud and fog computing;
c) cyber security;
d) simulation and cyber-physical systems;
e) fast prototyping;
f) visualization systems, virtual reality (VR) and enhanced reality (ER);

g) Internet of things and Internet of machines;
h) digital integration of business processes.

The eligible activities are listed in Inter-ministerial Decree by the Ministry for Economic Development of 4 May 2018.

Hyper-depreciation for 4.0 companies – article 1(60-65)

In order to promote technological and digital transformation processes according to the Industry 4.0 plan, hyper-depreciation has been extended to investments in new capital assets in productive facilities located in Italy, made until 31 December 2019 - or 31 December 2020 if the order was accepted by the seller and a 20% advance paid by 31 December 2019. The following increases of the acquisition cost will apply:

- 170% for investments up to the amount of Euro 2.5 million;
- 100% for investments of between more than Euro 2.5 million and up to Euro 10 million;
- 50% for investments of more than Euro 10 million and up to Euro 20 million.

No increase applies for investments of over Euro 20 million.

The entities benefiting from hyper-depreciation which make investments in capital intangible assets (listed in Annex B of Law no. 238/2016) qualify for a 40%-increase in the purchase cost of the assets. Again, in order to qualify for the incentive, investments must be made until 31 December 2019 or by 31 December 2020, provided that the order was accepted by the seller and a 20% advance is paid by 31 December 2019.

R&D tax credit – article 1(70-71)

For the period between the fiscal year subsequent to that ongoing at 31 December 2014 and the fiscal year ongoing at 31 December 2020, companies which invest in *R&D* activities (regardless of their legal form, area of business and accounting regime) are entitled to a tax credit at the rate of:

- 25% or;

- 50% of the costs exceeding the average R&D investments made in the three fiscal years prior to that ongoing at 31 December 2015.

The tax credit is capped to Euro 10 million per beneficiary and the minimum amount of eligible R&D costs is Euro 30,000.

The tax credit may be granted also to resident agents who carry out R&D activities on behalf of companies resident or established in EU member states, in EEA countries or in States included in the list referred to in Finance Ministry Decree of 4 September 1996 (i.e., States with which an exchange of information procedure is in place pursuant to the applicable double tax treaty). To this effect, the eligible R&D costs are those incurred for activities directly carried out in laboratories or other facilities based on the Italian territory.

Step-up of assets and equity interests – article 1(940-950)

The IRES taxable persons who do not adopt International Accounting Standards in the preparation of the financial statements may step up homogenous class of business assets and shareholdings with the exception of property which constitutes the company's stock-in-trade, shown in the financial statements at 31 December 2017.

The revaluation surplus may become distributable by paying a 10% substitute tax in lieu of IRES (corporate income tax), IRAP (regional tax on production activities) and any surcharges. The asset step-up may become relevant for tax purposes, starting from the third fiscal year subsequent to that in which the revaluation was made, by paying a substitute tax in lieu of IRES (corporate income tax), IRAP (regional tax on production activities) at the following rates:

- o 16% for depreciable/amortizable assets;
- o 12% for non-depreciable/amortizable assets.

The substitute taxes are payable in a single instalment by the deadline for the balancing payment for the year in respect of which the step-up was made. Amounts due may be offset with any available tax credits.

Solely with regard to real estate assets, the stepped-up values recorded in the financial statements are relevant for tax purposes starting from the fiscal year ongoing at 1 December 2020.

Amortization charges of goodwill and other intangibles – article 1(1079)

The amortization charges for goodwill and other intangibles which gave rise to the recognition of deferred tax assets not yet deducted in the fiscal year ongoing at 31 December 2017, are deductible:

- as to 5% of their aggregate amount, in the fiscal year ongoing at 31 December 2019;
- as to 3% of their aggregate amount, in the fiscal year ongoing at 31 December 2020;
- as to 10% of their aggregate amount, in the fiscal year ongoing at 31 December 2021;
- as to 12% of their aggregate amount, in the fiscal year ongoing at 31 December 2022 and until the fiscal year ongoing at 31 December 2027;
- as to 5% of their aggregate amount, in the fiscal year ongoing at 31 December 2028 and at 31 December 2029.

Deduction of write-downs and losses on receivables – article 1(1056)

The deduction of 10% of the costs for income tax and IRAP purposes provided by article 16 of Decree Law No 83/2015 ("*Deductibility of write-downs and losses on receivables for banking and financial institutions and insurance companies*") for the fiscal year ongoing at 31 December 2018, has been deferred to the fiscal year ongoing at 31 December 2026.

International accounting standards – article 1 (1070 – 1071)

Newly introduced article 2-*bis* of Legislative Decree No 38 of 28 February 2005 on International Accounting Standards, provides that the entities referred to in article 2 of the Decree (e.g., companies which issued financial instruments placed with the general public), whose securities are not traded in a regulated market, are entitled to apply the IAS with effect from the fiscal year prior to that of entry into force of the 2019 Finance Act.

Loss on accounts receivable - IFRS 9

The entities applying the provisions of article 106(3) of the Italian Income Tax Code (i.e., banking and

financial institutions) may deduct from their IRES taxable income the costs deriving from the recognition of the loss allowance for expected credit losses – per paragraph 5.5 of IFRS 9 – recorded in the financial statements at the time of first adoption of IFRS 9 in respect of clients as to 10% of their amount in the first fiscal year in which IFRS 9 is adopted and the remaining 90% in equal instalments over the subsequent nine years.

Interest expense of real estate companies – article 1(7)

Pending the review of the legislation concerning the direct and indirect taxation of real estate companies, the provisions of article 1(36) of Law No 244 of 24 December 2007 (Finance Act 2018) continue to apply. They provide for the setting up of a committee for the study of the direct and indirect taxation of real estate companies, having the task of suggesting legislative changes designed to simplify and rationalize the current system (having regard to the differentiation between management and building activities).

Pursuant to the above provision, companies which are actually and principally engaged in real estate activities are companies whose balance sheet assets mainly consist of the market value of property to be rented out and whose revenue consists by at least two thirds of proceeds from the lease of property or businesses whose aggregate value mainly consists of the market value of buildings.

Innovative start-up companies – article 1(218)

For FY 2019, the rate for the tax credits and tax allowances for anyone investing in an innovative start-up company (article 29(1), (4) and (7) of article 29 of Decree Law 179/2012) has been increased from 30 to 40%.
If an IRES taxable person (other than an innovative start-up company) acquires the entire share capital in an innovative start-up company, for FY2019 the rate is increased to 50%, provided that the 100% stake is held for at least three years.

IRAP – article 1(1085)

Article 11 of the IRAP Decree has been amended to reflect the abrogation of:

- the deduction of up to 15,000 Euro per year per employee working in any of the following regions:

Abruzzo, Basilicata, Calabria, Campania, Molise, Apulia, Sardinia and Sicily (21,000 euro for female workers and for workers under 35 years of age);
- the 10% tax credit (reducing gross tax) for entities who determine their net IRAP taxable base in accordance with articles 5 to 9 of Legislative Decree 446/1997 and which have no employees (article 1(21) of law No 190 of 23 December 2014).

Suspension of the increase in the VAT rate – article 1(2)

The planned 1.5 percentage point increase in the 10% reduced VAT rate and the 2.2 percentage point increase in the ordinary 22% VAT rate will not be implemented in 2019.
The ordinary rate will subsequently be increased by 0.3 percentage points in 2020 and by an additional 1.5 percentage points effective from 2021.

Deductibility of the municipal property tax (IMU) on property used in the course of business – article 1(12)

The Finance Act 2019 has also amended article 14(1) of Legislative Decree No 23 of 14 March 2011, to provide that the municipal property tax (IMU) on property used in the course of business is deductible from the IRES taxable base as to 40% of its amount. Instead, IMU is not deductible for IRAP.

The same provisions apply to the municipal property tax payable in the Autonomous Provinces of Bozen and Trento (respectively *imposta municipale immobiliare – IMI and imposta immobiliare semplice - IMIS*).

Registration tax - article 1(1084)

It has been established that article 1(87)(a) of law No 205/2017 constitutes an authentic interpretation of article 20(1) of the Italian Registration Tax Code. Pursuant to this article – as amended by Law No 205/2017, in force since 1 January 2018 – registration tax applies in accordance with the nature and legal effects of the instrument filed for registration and on the basis of the elements derived therefrom, regardless of any related instruments (except as provided by the subsequent articles of the Italian Registration Tax Code). As a result of the amendments introduced by the Finance Act 2019, considering that the article constitutes authentic interpretation, the wording of the rule applies retrospectively, i.e. before January 2018.

The 2019 Finance Act has also introduced the following changes:

- new possibility to take advantage of the step-up of land and shareholdings (article 1(1053 and 1054)) by paying a substitute tax at the following rates: 11% on the purchase value of significant shareholdings (at 1 January 2019) not traded in regulated markets and 10% on the purchase value of non-significant shareholdings (at 1 January 2019) not traded in regulated markets and the purchase value of building and farming land;
- relief to forgive the debt of individuals in severe financial difficulties (article1(184 -198));
- new possibility to take advantage of the exclusion of property used in the course of business from the rules on the determination of business income (and the concurrent inclusion of the property among the entrepreneur's private assets) subject to the payment of a substitute tax; eligible property is property used in the course of business owned at 31 October 2018 and excluded between 1 January and 31 May 2019; the tax is payable in instalments falling due on 30 November 2019 and 16 June 2020. The exclusion is effective as of 1 January 2019.

Pirola
Pennuto
Zei
& Associati
studio di consulenza
tributaria e legale

Via Vittor Pisani, 20
20124 Milano

T. +39.02.669951
F. +39.02.6691800

info@studiopirola.com
www.pirolapennutozei.it

TAX NEWSLETTER | 16 DECEMBER 2018 - 15 JANUARY 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 JANUARY 2019.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY TAX DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO UFFICIOSTUDI@STUDIOPIROLA.COM