

Bird & Bird &

Tax Alert n.1/2021

Budget Law 2021 (L. 30.12.2020, n. 178)



Budget Law 2021 (Law 30.12.2020, n. 178)

The Law 30 December 2020, no. 178 (so-called "Budget Law 2021"), containing provisions on the "State budget for the financial year 2021 and multi-year budget 2021-2023" and introducing various provisions to support the national economy with effect from January 1, 2021, was published in the Official Gazette of 30 December 2020, S.O. no. 46.

The following are the main changes introduced by the Budget Law 2021 in the tax area.

Direct taxes

Expatriate workers regime

Art. 1, par. 50

The Budget Law 2021 intervenes on the regime of expatriate workers, pursuant to art. 16 of Legislative Decree no. 147/2015, which provides for a partial exemption from taxation of the income produced in Italy for a period of five years upon the occurrence of specific conditions.

The possibility of extending the favourable taxation regime to five additional tax periods - already established for subjects having transferred their residence to Italy starting from 30 April 2019 - is also introduced to subjects registered with AIRE or citizens of the European Union, who:

- transferred their residence to Italy before 2020;
- benefitted from the regime as of 31 December 2019.

The conditions to have at least one minor child or a dependent child or owning a home in Italy remain still valid.

The benefit is granted upon payment of a sum equal to 10% of the income of the tax period prior to the exercise of the option (5% in the case of workers with at least three dependent minor children).

Tax recognition of intangible assets

Art. 1, par. 83

The provisions pursuant to art. 14 of Law no. 342/2000 on the tax recognition of the higher statutory values are also applicable to goodwill and other intangible assets without legal protection (i.e. expenses relating to several years) resulting from the financial statements ongoing as of 31 December 2019.

It is therefore possible to realign the tax value of goodwill and other intangible assets to the statutory value by paying a substitute tax equal to 3% of the realigned differential in a maximum of three annual installments of the same amount.

The provision requires posting a tax reserve under suspension regime, equal to the realigned amount net of the substitute tax of 3%, which can be released by paying a substitute tax of 10%.

Changes to the discipline of short-term rents

Art. 1, par. 595

The Budget Law 2021 intervenes on the regime related to short-term rents, providing that the flat rate tax regime (i.e. substitute tax of 21%) is applicable only in case of short-term leasing of no more than four apartments per each tax period.

An absolute legal presumption is therefore introduced according to which the rental of more than four house units in a single tax period is considered an entrepreneurial activity pursuant to art. 2082 of the Italian Civil Code. This provision repeals art. 4, par. 3-bis, of the Legislative Decree no. 50/2017.

This presumption also applies in case of contracts stipulated through subjects carrying out real estate brokerage activities or managing telematic portals dedicated to short-term rents.

Art. 1, par. 597

The law provides for the introduction of a new database reporting the list of the accommodation facilities and properties used for short-term rental

purposes: each house unit shall be identified by means of a code to be used in any communication relating to the offer and promotion of the services to the users. The provision refers to the definition and management of such a database in a decree of the Minister for Cultural Activities; it is therefore replacing the existing database provided for by art. 13-*quarter* of Legislative Decree 34/2019.

Postponement of the revaluation of the tax cost of lands and equity investments

Art. 1, par. 1122-1123

It extends the possibility, already established by art. 5-7 of Law no. 448/2001, for individuals, simple partnerships, non-commercial entities and non-resident subjects without a permanent establishment in Italy to step up the purchase cost (i.e. tax cost) of unlisted equity investments and lands, owned outside the business regime as of 1 January 2021.

In order to opt for this regime, it is necessary by 30 June 2021:

- to have a sworn appraisal of the equity investment and land prepared by a qualified professional (e.g. chartered accountant, engineer);
- to pay a substitute tax equal to 11% of the appraisal value for its entire amount or, in case of payment on an installment basis, for the first of three annual installments of equal amount.

Indirect taxes

Sales at a "zero" VAT rate to contrast COVID-19

Art. 1, par. 452-453

The VAT exemption regime, introduced by art. 124 of the Decree Law no. 34/2020, is extended to tax periods 2021 and 2022.

The exemption is limited to:

- the sale of COVID-19 diagnostic tools and the provision of the relevant connected services;
- the sale of COVID-19 vaccines, authorised by the European Commission or by the Member States in the period between 20 December 2020 and 31 December 2022, and the provision of the relevant connected services.

The remaining goods, as reported in art. 124 of the Decree Law no. 34/2020, are subject to a reduced VAT rate of 5%.

Measures against fraud carried out with the use of false VAT exemption threshold

Art. 1, par. 1079-1083

In order to contrast fraud carried out using false VAT exemption thresholds, the provision under exam states that:

- the Tax Authorities will carry out specific risk analysis and substantial control activities on taxpayers with the aim to verify the effective existence of the conditions to have the status of "frequent exporter";
- in case of negative response and consequent denial of the status of frequent exporter, the taxpayer is prevented from issuing new VAT exemption requests by means of the electronic channels of the Tax authorities;
- if the electronic invoice reports the protocol number of an invalidated VAT exemption requests, the e-invoicing system (i.e. "Sistema di Interscambio") prevents the issuance of the invoice.

The procedures to implement the above provisions will be defined in an ad hoc order to be issued by the Tax Authorities.

Changes to tax plastic tax

Art. 1, par. 1084

The enforcement of the plastic tax, introduced by art. 1, par. 634-652, of Law no. 160/2019, is postponed from 1 January 2021, to 1 July 2021.

The provision states the following modification to the previous discipline:

- resident and non-resident subjects selling plastic products with single use (so-called "MACSI"), that are manufactured by third parties in Italy, are obliged to pay the plastic tax;
- the quarterly threshold for the exemption from the payment of the tax and the filing of the relevant return is raised from € 10 to € 25;
- in case of omitted payments, an administrative penalty ranging from two to five times the non-paid tax shall be applied, with a minimum amount of € 250;
- in case of delayed payments, an administrative penalty equal to 25% of the due tax shall be applied, with a minimum amount of € 150;

- in case of delayed filings of the return and any other violation, an administrative penalty ranging from € 250 to € 2,500 shall be applied.

The implementation of the provisions relating to the plastic tax will be defined in a specific order by the Director of the Customs Agency.

Changes to the sugar tax

Art. 1, par. 1086

The measures relating to the sugar tax, introduced by art. 1, par. 661-676, of Law no. 160/2019, are postponed from 1 January 2021, to 1 January 2022.

The provision states the following modifications to the previous discipline:

- resident and non-resident subjects, on behalf of whom the sweetened drinks are obtained by manufacturers or sellers, are obliged to pay the sugar tax;
- in case of omitted payments, an administrative penalty, ranging from two to five times of the non-paid tax, shall be applied, with a minimum amount of € 250;
- in case of delayed payments, an administrative penalty, equal to 25% of the due tax, shall be applied, with a minimum amount of € 150;
- in case of delayed filings of the return and any other violation, an administrative penalty ranging from € 250 to € 2,500 shall be applied.

Lottery of receipts and cashback

Art. 1, par. 1095-1097

The participation in the prize drawing related to the lottery of receipts, pursuant to art. 1, par. 540, of Law no. 232/2016, is allowed only if the purchases are made through electronic payments.

With reference to the cashback discipline, provided for by art. 1 of Law no. 160/2019, it is established that the refunds are entirely not subject to personal income taxation and, in general, to any tax levy.

Terms of registration of sales invoices

Art. 1, par. 1102

Taxpayers opting for the periodic VAT balance computation on a quarterly basis are allowed to book issued invoices by the end of the month following the quarter in which the transaction occurred.

Changes to the provisions related to the report of cross-border transactions (so-called "esterometro")

Art. 1, par. 1103

Significant modifications have been made to the provisions related to the report of cross-border transactions (i.e. "esterometro"), with reference to operations occurring from 1 January 2022.

It is stated that:

- the communication is made through the e-invoicing system (i.e. "Sistema di Interscambio") using the XML format, that is already adopted for the issuance of electronic invoices;
- data related to sale transactions towards subjects not established in Italy shall be filed within the term of issuance of the relevant invoice;
- data related to purchase transactions towards subjects not established in Italy shall be filed by the 15th day of the month following the one when the relevant invoice is received, or the underlying operation is completed.

Use of tax data stored in the Tax Register for pre-filled VAT documents

Art. 1, par. 1106

This provision clarifies that, for the purpose of drafting the pre-filled VAT documents (VAT registers, periodical VAT balances and VAT annual return), the Tax Authorities are allowed to use tax data stored in the Tax Register, in addition to those obtained by electronic invoices and reports of cross-border transactions and payments.

Taxpayers that are interested in accessing the pre-filled documents by means of qualified intermediaries are required to give them a specific proxy for using these services.

Joint payment of stamp duty on electronic invoices

Art. 1, par. 1108

For electronic invoices, the transferor of the goods or the service provider is jointly and severally obliged to pay the stamp duty, even if the document is issued by a third party on its behalf.

Tax credits

Super bonus of 110%

Art. 1, par. 66-70

Some changes have been introduced to the provisions of the so-called super bonus, established by art. 119 of the Decree Law no. 34/2020, which provides for a tax credit equal to 110% of the expenses related to energy efficiency and anti-seismic interventions in compliance with certain requirements set by the provision.

In particular, the Budget Law 2021 extends the applicability of the bonus to expenses incurred in the period between 1 July 2020 and 30 June 2022, by providing specific methods of using the tax benefit:

- five annual installments of the same amount for expenses incurred up to 31 December 2021;
- four annual installments of the same amount for the expenses incurred in 2022.

The possibility to opt for the sale of the tax credit or for the discount, equal to the tax credit, on the consideration to be paid for the above expenses is also extended to costs incurred in 2022.

Tax credit for investments in South Italy

Art.1, par. 171-172

The law provides for the extension of the tax credit introduced by art. 1, par. 98-108, of Law no. 208/2015 until 31 December 2022, for companies purchasing new capital goods which are part of an initial investment project and are allocated to production facilities located in the southern regions of Italy, such as Campania, Puglia, Basilicata, Calabria, Sicily, Molise, Sardinia and Abruzzo.

The benefit is recognised to the extent of:

- 25% for large-sized companies, within the maximum investment limit of € 15 million (the percentage is reduced to 10% for Molise and Abruzzo);
- 35% for medium-sized enterprises, within the maximum investment limit of € 10 million (the percentage is reduced to 20% for Molise and Abruzzo);
- 45% for small-sized businesses, within the maximum investment limit of € 3 million (the percentage is reduced to 30% for Molise and Abruzzo).

Incentive for business combinations

Art.1, par. 233-242

In order to incentivise business combinations, it is possible to convert deferred tax assets (DTAs), even

if not posted in the financial statements, into a tax credit in the event of mergers, demergers or contributions of companies that are approved between 1 January 2021, and 31 December 2021. Convertible deferred tax assets shall refer to:

- tax losses carried forward up to the tax period prior to the ongoing year as of the date of legal effect of the transaction and not yet used to offset the taxable income;
- Allowance of Corporate Equity (so-called “ACE”) benefit accrued up to the tax period prior to the ongoing year as of the date of legal effect of the transaction and not yet used to offset the taxable income.

The provision requires the following conditions to be met:

- the companies participating in the business combination shall have been operating for at least two years;
- on the date of the transaction and in the two preceding years, the involved companies shall not have been part of the same corporate group, have been linked by any shareholding relationship greater than 20% and have been controlled, even by means of indirect control, by the same subject.

In case of business combinations carried out through mergers and demergers, it is allowed to convert the DTAs accrued by both parties participating in the transaction, if they refer to tax losses and ACE benefit that can be carried-over on the basis of the vitality and equity test pursuant to art. 172, par. 7, of Italian tax code (ITC) for mergers (art. 173, par. 10, of ITC for demergers). In case of business combinations carried out through contributions of companies, it is possible to convert only the components accrued by the assignee, given the limits provided for by art. 172, par. 7, of ITC.

The conversion of the DTAs into a tax credit takes place in two different moments:

- for ¼ on the date of legal effect of the transaction;
- for ¾ on the first day of the financial period following the ongoing year as the date of legal effect of the transaction.

The completion of the conversion of the DTAs into a tax credit is subject to the payment of a fee equal to 25% of the converted DTAs. The fee is deductible for IRES and IRAP purposes in the tax period of the payment.

The provision sets a maximum limit that is convertible into a tax credit, which is equal to:

- 2% of the sum of the assets of the parties participating in the merger or demerger, without considering the company having the assets with the highest amount;
- 2% of the sum of the assets contributed in case of a contribution.

The tax credit can be offset with other taxes payable, transferred or asked for refund.

Incentive for capital increase

Art. 1, par. 263-264

The article provides for the extension of the benefit, introduced by art. 26 of the Decree Law no 34/2020, relating to the capital increases carried out until 30 June 2021, and for some changes in the previous provision.

The incentive is aimed at joint stock companies and cooperative companies that:

- obtained revenues between € 5 million and € 50 million in the tax year 2019;
- experiences an overall reduction of the revenues in the period between 1 March 2020, and 30 April 2020, that is not lower than 33% compared to the same period of the previous year.

In case of a capital increase deliberated by 30 June 2021, the provision recognises, in favour of the company beneficiary of the contribution, a tax credit equal to 50% of the losses exceeding 10% of the net equity, computed gross of such losses up to 50% of the capital increase.

The tax credit can be offset with other payable taxes starting from the tenth day following the investment, after the approval of the financial statements for the financial year 2020 and by 30 November 2021.

The limit on the distribution of the equity reserves, deriving from the capital increases made in the first semester of 2021, is postponed to the end of 2024.

Tax credit for the promotion of managerial skills

Art. 1, par. 536

A tax credit is introduced for donations made in 2021 and 2022 in the form of scholarships, for training initiatives aimed at the development and acquisition of managerial skills promoted by universities and business schools.

The tax credit is recognised for donations within the limit of € 100,000 and is equal to 100% for small-sized enterprises, 90% for medium-sized enterprises and 80% for large enterprises.

Tax credit for cinema

Art. 1, par. 583

The Budget Law 2021 modifies the Law no. 220/2016 with reference to the tax credit for the costs related to the production and distribution of films and audiovisual products.

The tax credit was recognised for an amount between 15% and 30% of the costs. The newly introduced provision increased the maximum threshold to 40%.

Tax credit for advertising investments

Art.1, par. 608

The tax credit for advertising investments is extended to financial years 2021 and 2022, as already established by art. 98, par. 1, of the Decree Law no. 18/2020 and by art. 186 of the Decree Law no. 34/2020.

In particular, the tax credit shall be recognised to the extent of 50% of the absolute value of the advertising investment made in daily and periodical newspapers, and in digital format. With respect to the provisions in force until 2020, advertising costs on radio and television broadcasters are no longer eligible.

The incentive can be requested to the Tax Authorities, once the deadlines to submit the requests are set.

Tax credit for the purchase of digital services

Art. 1, par. 610

The tax credit for digital services, provided for by art. 190 of the Decree Law no. 34/2020, is extended to 2021 and 2022.

The tax credit is recognised to publishing companies of daily and periodical newspaper, that meet, among others, the following requirements: registered office in a Member State of the European Union, tax residence or permanent establishment in Italy, employment of at least an employee with a permanent contract.

The benefit is equal to 30% of the expenses incurred in the previous year for digital services such as those related to servers, hosting, maintenance for online newspaper and information technology for the purpose of connectivity management.

Tax credit for investments in new capital goods

Art. 1, par. 1051-1063

The tax credit for investments in new capital goods, introduced by art. 1, par. 185 et seq., of Law no. 160/2019, is postponed and amended.

The benefit is recognised to businesses resident in Italy, permanent establishments of non-resident subjects, and to subjects carrying out arts and professions.

In case of investments made from 16 November 2020, to 31 December 2021, or to 30 June 2022, provided that the relevant order is accepted by the seller and advance payments of at least 20% of the total expenditure are paid as of 31 December 2021, the new discipline provides the following:

- for ordinary tangible and intangible capital goods, the tax credit is recognised for 10% of the cost within the maximum limit of eligible expenses of € 2 million for tangible assets and € 1 million for intangible assets (the percentage is raised to 15 % for investments in remote working facilities);
- for tangible assets 4.0, the tax credit is recognised for 50% of costs up to € 2.5 million, 30% of costs between € 2.5 million and € 10 million and 10% of costs between € 10 million and € 20 million;
- for intangible assets 4.0, the tax credit is recognised for 20% of the costs within the maximum limit of eligible expenses of € 1 million.

In case of investments made from 1 January 2022, to 31 December 2022, or 30 June 2023, provided that the relevant order is accepted by the seller and advance payments of at least 20% of the total expenditure are paid as of 31 December 2022, the new discipline provides the following:

- for ordinary tangible and intangible capital goods, the tax credit is recognised for 6% of the cost within the maximum limit of eligible expenses of € 2 million for tangible assets and € 1 million for intangible assets;
- for tangible assets 4.0, the credit recognised up to 40% of costs is recognised at € 2.5 million, 20% of costs between € 2.5 million and € 10 million and

10% of costs between € 10 million and € 20 million;

- for intangible assets 4.0, the tax credit is recognised for 20% of the cost within the maximum limit of eligible expenses equal to € 1 million.

The tax credit is not eligible for investments in vehicles and other means of transport, goods with a tax depreciation rate lower than 6.5%, buildings and constructions.

The tax credit can be used for offsetting using the F24 form in three annual installments of equal amount. In case of investments in new ordinary capital goods, the possibility to offset is available from the year when the goods are put into operation, while in case of investments in new capital goods 4.0, it is available from the year of the interconnection.

It is required that the purchase invoices of the eligible goods report the law reference of such provision.

Tax credit for research, development and innovation activities

Art. 1, par. 1064

The provision postpones the tax credit for investments in research and development, technological innovation and other innovative activities from 2020 until 2022.

The tax credit is recognised:

- for eligible research and development activities, to the extent of 20% of the relevant computation base, up to the limit of € 4 million;
- for technological innovation activities, to the extent of 10% of the relevant computation base, up to the limit of € 2 million (the percentage is raised to 15% in case of investments in ecological transition or digital innovation 4.0);
- for the activities of design and aesthetic ideation, to the extent of 10% of the relevant computation base, up to the limit of € 2 million.

The tax credit can only be used for offsetting using the F24 form, in three annual installments of the same amount, starting from the tax period after the one when the expenses accrued.

Tax credit for adapting the work environment

Art. 1, par. 1098-1100

This provision modifies art. 120, par. 2, of the Decree Law no. 34/2020 related to the tax credit for the adaptation of the working environment in response to the COVID-19 emergency.

The beneficiaries of the tax credit are allowed:

- 1 to offset it with other payable taxes from 1 January 2021, to 30 June 2021 (not anymore for the entire financial year as it was previously established);
- 2 to opt for the sale of the tax credit until 30 June 2021.

International taxation

Changes to the international ruling procedure

Art. 1, par. 1101

The Budget Law 2021 modifies the discipline relating to the international ruling procedure provided for by art. 31-ter of the Presidential Decree no. 600/1973.

The modification aims to align the term of effectiveness of unilateral and bilateral/multilateral rulings by providing for the right to have their effects retroacted up to the tax periods for which the statute of limitations, pursuant to art. 43 of the Presidential Decree no. 600/1973, has not yet elapsed, in compliance with specific conditions.

Thanks to this possibility, if it was necessary to correct past behaviour, the taxpayer would be able to rectify it by means of the voluntary amendment procedure, or by filing an amended tax return without the application of any penalty.

In line with the provisions already in place in other countries, it is also envisaged that, in case of bilateral and multilateral rulings, the eligibility of the relevant request is subject to the payment of a commission ranging from € 10,000 to € 50,000 on the basis of the overall turnover of the group to which the taxpayer belongs.

Other provisions

Financial offsetting of trade receivables and payables

Art. 1, par. 227-228

The provision introduces a mechanism for the offsetting of trade receivables and trade payables resulting from the electronic invoices filed through the e-invoicing system (i.e. “Sistema di

Interscambio”) and referring to taxpayers that are resident or established in Italy. The Tax Authorities will provide and manage a dedicated digital platform through which it will be possible to exercise the financial offsetting, which will have the same value as the extinction of obligations provided for by the Civil code.

Taxpayers subject to bankruptcy procedures, debt restructuring agreements and certified plans and public administrations are excluded from the above mechanism.

A ministerial decree will identify the enforcement features of the provision.

Temporary provisions on the reduction of capital

Art. 1, par. 266

The paragraph under exam modifies the art. 6 of the Decree Law no. 23/2020, which suspended, for the period 9 April 2020 to 31 December 2020, the provisions of the Civil code with reference to capital reduction due to losses (art. 2446, 2447, 2482-bis and 2482-ter) and with reference to the winding-up of companies due to reduction or loss of capital.

The new rule extends the suspension period of the provisions of the Civil code, by stating that the losses emerging in the ongoing financial year as of December 31, 2020, shall be sterilised and that the consequent corporate fulfilments shall be postponed to the shareholders meeting approving the financial statements of the fifth subsequent year.

With reference to losses exceeding one third of the share capital, it is envisaged that, in the event that such losses are not reduced to less than one third of the share capital within the fifth following year, the shareholders meeting approving the financial statements for the ongoing financial year as of 31 December 2025, is required to decrease the capital in proportion to the ascertained losses.

With reference to losses reducing the share capital below the minimum legal threshold, it is envisaged that the shareholding meeting, that is called without delay by the directors, deliberates alternatively:

- the immediate decrease of the share capital and the simultaneous increase of the same to an amount that is not lower than the minimum legal threshold; or

- the postponement of the above resolution decision to the end of the ongoing financial year as of 31 December 2025.

It is envisaged that the losses under exam shall be separately indicated in the explanatory notes of the financial statements in specific tables, by reporting their origin as well as the movements that occurred during the year.

<Insert text here>

Changes to the discipline of online intermediation services

Art.1, par. 515

It is provided that online intermediation service providers and online search engines offering their services in the territory of the state, even if not established therein, shall be registered in the Register of Communication Operators (ROC) at AGCOM.

Pharmaceutical Payback

Art. 1, par. 475-477

The Budget Law 2021 provides for the update of the limits of the agreed pharmaceutical expenditure for 2021; the enforcement of the new limits is subject to the full payment of the payback related to 2018 by pharmaceutical companies.

Foreign investment funds

Art. 1, par. 631-633

Starting from 1 January 2021, it is provided that the dividends distributed to the following entities are not subject to withholding tax:

- foreign collective investment funds (UCIs) compliant with the Directive 2009/65/CE and
- foreign collective investment funds that are not compliant with the same directive, but whose fund manager is subject in the foreign country to the supervision pursuant to Directive 2011/61/EU.

The investment funds shall be established in the Member States of the European Union and in the States adhering to the Agreement on the European Economic Area allowing for an adequate exchange of information.

In addition, capital gains and losses realised by the above mentioned subjects are exempt from taxation.

Contacts

Gaetano Salvioli

Partner

Tel: +39 02 3035 6000
gaetano.salvioli@twobirds.com



Giuliana Polacco

Senior Counsel

Tel: +39 02 3035 6000
giuliana.polacco@twobirds.com



twobirds.com

Abu Dhabi & Amsterdam & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & San Francisco & Shanghai & Singapore & Stockholm & Sydney & Warsaw & Satellite Office: Casablanca

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.