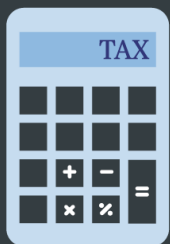


Bird & Bird & Tax Alert

July 2019

ITALY – "Growth Decree 2019"



ITALY - "GROWTH DECREE 2019" - TAX IMPACTS FOR ITALIAN ENTITIES

The Italian Parliament has finally approved a new legislation focused on enhancing the Italian economy (so called "Growth Decree", Law n. 58, June 28, 2019). The initial draft legislation (Law Decree n. 34/2019) was expanded and amended during the conversion period and entered into force last June 30 (following the publication on the Official Gazette n. 151 of June 29, 2019).

The Growth Decree is a long and comprehensive document which includes a number of provisions having different nature and affecting different sectors. Below, an outline of the main tax provisions having an impact for the Italian entities.

DIRECT TAXES

Extension of super-depreciation rule

The investments made for new tangible assets - purchased from April 1, 2019 to December 31, 2019 or June 30, 2020 (some conditions must be met in this latter case) - will benefit from a higher tax depreciation rate equal to 130% of the assets value. The incentive is limited to Eur 2,5 million of new investments.

Reduced tax rate of corporate income tax (so called "Mini IRES")

Italian companies, including permanent establishment of non-resident companies, can apply a progressive reduced tax rate of corporate income tax (i.e. for calendar year companies, from 22,5% in FY2019 up to 20% effective from FY2023) on the portion of taxable basis corresponding to the amount of the retained earnings (generated starting from FY2018) which are recorded as available reserves.

Deductibility of the municipal tax on the real estate (so called "IMU")

The Growth Decree provides a progressive increase of the deduction for IRES purposes of the municipal tax on real estate, i.e. 50% in FY2019, 60% in FY2020 and FY2021, 70% in FY2022 and 100% effective from FY2023 (for calendar year companies).

New terms for tax returns filing

The deadline to file the tax returns for IRES and IRAP (Regional Tax) purposes is extended from nine to eleven months following the closing of the financial year (i.e. November 30th when the FY coincides with calendar year). Said new deadline is already applicable for IRES and IRAP tax return to be filed for FY2018 (which will be due on next December 2, 2019 being Saturday 30th November 2019).

Business combination bonus (so called "bonus aggregazioni")

The Growth Decree reintroduces the business combination bonus granted in case of extraordinary transactions (e.g. merger, demerger, contribution in kind, etc.) occurring in the period from May 1, 2019 to December 31, 2022 and involving companies not belonging to the same group. The incentive allows to step up for tax purposes the book value of certain items resulting from the business combination (e.g. goodwill, tangible assets) with no payment of the substitutive tax, up to an amount not exceeding Eur 5 million, to the extent that certain conditions are met (i.e. the business combination involves companies active for at least two years, the involved companies do not belong to the same Group, no further reorganizations occur in following four fiscal years). The incentive is applicable as from the fiscal year following the reorganization for both IRES and IRAP purposes.

PATENT BOX

Amendments to the Patent Box regime

The Growth Decree introduces a simplified procedure to enter the Patent Box regime. The previous rules required a compulsory tax ruling phase with the Revenue Agency in order to access the regime in cases of direct use of the intangible assets. Starting from 2019 taxpayers are entitled to determine by themselves the portion of income for which the incentive is granted and record the relevant amount directly in the relevant tax return, avoiding the advance ruling procedure with the Italian Tax Authority.

Subjects willing to opt for this simplification are required to split the downward tax adjustment into three equal annual instalments from the fiscal year in which the option is exercised. The option is available also to those taxpayers who already filed a

tax ruling application, provided that the process has not been completed yet and the applicant notifies the Revenue Agency the withdrawal from the application. In case of a subsequent tax assessment, penalties will not be applied if the taxpayer provides the Italian Tax Authority with appropriate documentation that must be prepared in compliance with the guidelines to be issued by the Revenue Agency.

INDIRECT TAXES

Online Marketplace – VAT liability of platforms

The Growth Decree includes an interim provision aimed at achieving the possibility for the Revenue Agency to prevent VAT frauds made in case of sale of goods concluded through online marketplace operators by introducing the obligation, on one side, to provide detailed information of the online suppliers and supplies to the Revenue Agency and, on the other side, to transfer the VAT liability to online marketplace.

In particular, the subject which facilitates through its online marketplace the distance sale of goods whether imported or circulating within the European Community shall transmit to the Revenue Agency on a quarterly basis the following information regarding each supplier:

- full name and address of the supplier, the place of residence or domicile, the identification code, if existent, the e-mail address;
- the number of units sold in Italy;
- upon the online marketplace's decision, for the units sold in Italy, the total amount of the sales price and the average sales price.

The Revenue Agency shall have to issue instructions regarding the modality for the transmission of the data (although no deadline has been set in the law) and the relevant deadline. The initial deadline, which was set within July 2019, has been cancelled.

The online marketplace operators is, however, considered debtor for VAT due on distance sales of goods for which (i) the above information have not been transmitted; or (ii) the information have been transmitted, but they were incomplete, unless it provides proof that VAT has been correctly paid by the supplier. As a result, the role of the platform as possible responsible for VAT payment has been

certainly expanded with consequent more burdensome onboarding actions.

The new provision will stay in force until December 31, 2020, since starting from January 1, 2021 new rules will enter into force. In particular, in line with the EU legislation, the online marketplace will intervene in the invoicing procedure (acting as a buy seller from an invoicing perspective) in case of sale of electronic goods. Such legislation which was introduced as of February 13, 2019 with article 11-bis, paragraphs from 11 to 15 of Legislative Decree n. 135/2018 (L. 12/2019) will enter into force as of January 1, 2021.

Extension of the mandatory e-invoicing regime

The transactions performed between VAT liable subjects established in Italy and San Marino are included in the perimeter of the electronic invoicing rules. The operative instructions will be rendered available upon publication of the relevant implementation Decree.

Extended timing for invoicing issuance

The time limit for the issuance of invoices is extended from 10 to 12 days. The tax point date and the other relevant rules remain unchanged.

Simplification for the filing of the Q4 quarterly VAT communication

In order to simplify the year-end formalities, it is provided that the Q4 VAT communication may be reported in the relevant VAT return. In such a case the Annual VAT return needs to be filed within the end of February.

Transfer of the VAT credit

In addition to the possibility of transferring the annual VAT credits, the Growth Decree entitles taxpayers to dispose of the quarterly ones as well. This provision applies to the VAT credits accrued on a quarterly basis and claimed for reimbursement starting from January 1, 2020.

Simplifications of the frequent exporter regime and declaration (so called "dichiarazione di intento")

Simplifications to the formalities for the release and maintenance of the "dichiarazioni d'intento" which entitle taxpayers to benefit of the VAT plafond rule

have been introduced. In particular, all the information related to the above mentioned declaration will be rendered available to the suppliers by the Italian Revenue Agency upon a specific query to be made on the Revenue Agency's database. For this purposes, the customers will be required to provide the suppliers with the sole receipt protocol number of the declaration. The same number will be mandatory mentioned on the invoice by the suppliers. As a consequence, the mandatory recording obligations formalities currently provided are repealed.

Accounting books

All accounting books that can be updated through electronic systems are required to be printed on paper only upon request by the Italian Tax Authorities (as already granted for the VAT registers).

Stamp duty on e-invoices

Starting from January 1, 2020, the Revenue Agency is allowed to amend the e-invoices in case the stamp duty is not correctly applied by the taxpayer during the generation of the document. Hence, the taxpayer is required to pay the stamp duty on the basis of the quarterly amount communicated by the Revenue Agency, which may take into account any integration made by the Agency itself.

Custom duty payments

Taxpayers are allowed to pay custom duties by electronic and traceable means of payments (including credit or debit card). Payments are allowed in cash only within a threshold of Eur 300.

PROCEDURAL ASPECTS

Request of documentation to taxpayers

When the Revenue Agency performs formal controls on tax returns of taxpayers, a number of documents is normally requested to verify the legitimacy of the taxpayers' behavior. In order to avoid burdensome requests, the Growth Decree provides that the Revenue Agency is not entitled to ask taxpayers documents and information that are already at disposal of the tax administration. Such requests can be done only in case the information needed are not at disposal of the tax authorities or when there are discrepancies between the information provided by the taxpayers and those in

the archives of the Revenue Agency. The scope of the provision is to relieve taxpayers from unnecessary and burdensome activities to answer the Revenue Agency requests.

Information regarding compliance obligations and simplification

The Revenue Agency undertakes to identify methods aimed to ensure that taxpayers are put in the position of correctly complying with the formalities provided by the law. For this purpose the Taxpayers' Rights Chart has been amended to ensure that the Revenue Agency guarantees that any necessary form, instruction, guideline is at disposal of the taxpayer at least 60 days prior to the deadline to comply with the relevant formality.

Mandatory confrontation with the taxpayer

A new provision has been introduced with the scope of obliging the Revenue Agency to establish a formal confrontation with the taxpayer before issuing a tax assessment. In particular, when a tax report is not handed over to the taxpayer, the Revenue Agency is obliged to notify the taxpayer an invitation to appear, anticipating the content of a possible challenge and providing the possibility to reach a settlement. The purpose of the new rule is that of preventing situations where the taxpayer is not aware of the audit carried out upon him and is notified a tax assessment without having the possibility to discuss the case with the Revenue Agency. This attitude of the Tax Office has given rise to debate and significant number of case law finalized to protect the taxpayer's rights of defense.

Legal defense of the Revenue Agency – Collection Office

A new provision clarifies that the defense of the Revenue Agency – Collection Office (i.e., the former Equitalia, which is the office dedicated to the collection of taxes) can be granted to its own internal personnel, but also to independent lawyers who are duly selected. The rule is aimed at interpreting the current legislation and resolving the pending controversies regarding the legal defense of the Revenue Agency before tax courts.

OTHER PROVISIONS

Scrapping procedure for the notices of payment

The program to scrap notices of payment which was already approved (and expired), the so-called "rottamazione-ter", has been extended to July 31, 2019.

Taxpayers can obtain the cancellation of old debts, included in notices of payments and communicated by the Revenue Agency to the Collector Agent between January 1, 2000 and December 31, 2017, by filing a specific request by July 31, 2019 and paying the relevant taxes, net of penalties, delay-interest and collection fees.

The payment can be executed in full or in a maximum of 17 instalments to be paid within five years, based on a precise timeline.

Short-term rental provision

The Growth Decree introduced further provisions linked to the short-term rental provision introduced by the Law Decree no. 50/2017 converted in Law no. 96/2017 (so called "Manovrina"). In particular:

- extension of the liability to the Italian company(ies) belonging to the same Group for the application and payment of the flat tax on the amounts of the short-term rentals;
- set up a data base of the accommodation facilities as well as of the properties dedicated to short rentals, present on the Italian territory, where the properties are identified through an alphanumeric code (hereinafter "identification code") to be used in any communication related to the offer and promotion of the services;
- obligation to publish the identification code in each communication related to the offer and promotion of the relevant properties by the owners of the accommodation or by the subjects

which exercise the property intermediation agency, as well as the subjects which manage web portals. In case of violation, administrative penalty ranging from Eur 500 to Eur 5.000 are applied.

Tax benefits on the transfers of real estate properties

Under the Decree, registration, mortgage tax and cadastral tax apply at the fixed amount of Eur 200 for each tax if the buildings are purchased between May 1, 2019 and December 31, 2021 for the purposes of demolishing, redeveloping (with the achievement of specific energy-efficiency features) and selling them in the following 10 years. If the buyer does not perform such a redeveloping activities and sells the building within the 10-year limit, the above mentioned taxes apply according to ordinary rules and rates, plus a 30% penalty and interest for the late payment.



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