

Italy approves 2020 Budget Law

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Executive summary

On 27 December 2019 the Italian Parliament approved the 2020 Budget Law (Law n. 160 of 2019), which was published in the *Official Gazette* of 30 December 2019 (the Law).

The most relevant tax measures contained in the Law relate to:

1. Reintroduction of the Notional Interest Deduction (NID) regime and repeal of the reduced Corporate Income Tax (CIT) on qualifying taxable income
2. Enactment of Italy's unilateral Digital Services Tax (DST)
3. Tax credit for the purchase of new tangible assets
4. Tax credit for Research and Development (R&D)
5. Revamping of a special regime to step up Italian participations
6. Revamping of a special regime to step up business assets
7. Plastic Tax
8. Sugar Tax
9. Deductibility of Municipal Property Tax (IMU)

Detailed discussion

Reintroduction of the NID regime and repeal of the reduced CIT rate on qualifying taxable income

The Law reintroduces the NID regime previously repealed by the 2019 Budget Law.¹ The deduction rate is set at 1.3% and applies as of the Fiscal Year (FY) following the one in course on 31 December 2018 (i.e., FY 2019 for calendar year entities). The NID regime replaces the reduced CIT measure recently introduced by Law Decree n. 34/2019 of 30 April 2019 which, therefore, never became applicable.²

Under the NID provision, Italian resident companies and Italian permanent establishments of foreign entities may deduct from their net taxable income an amount corresponding to the notional return (now set at 1.3%) on any qualifying net increase of the equity as compared to the equity as of the end of FY 2010.³ Such deduction may offset the annual tax income but may not generate a loss. Any excess can be carried forward without time limitation, converted into regional tax on productive activities (IRAP) credits or surrendered within a tax group.

Taxpayers are thus allowed to resume and apply the NID regime as of FY 2019, in continuity with previous FYs, by considering any net increases in equity from 2011 to 2018.

Enactment of Italy's unilateral Digital Services Tax

The Law introduces a 3% indirect tax applicable to the revenues derived from the provision of certain digital services (Italian DST) by building on the Italian DST measure already contained in the 2019 Budget Law but never entered into force in the absence of a required implementing decree.⁴

Taxable persons are Italian and foreign entities - either stand-alone or at the group level - with worldwide annual revenues of at least €750 million and Italian annual revenues stemming from the qualifying digital services of at least €5.5 million.

The new Italian DST is immediately effective as of 1 January 2020 without the need of any implementing decree.

Tax credit for the purchase of new tangible assets

The Law replaces the extra-amortization regime previously available for government Industry 4.0 Plan high-tech investments⁵ with a new tax credit for the purchase of new tangible assets (including the ones previously covered by extra-amortization) and certain intangible assets.

The measure of the tax credit applies as follows:

- ▶ **In general, for new tangible assets** the tax credit amounts to 6% of the purchase cost with a maximum annual investment amount of €2 million.
- ▶ **For new high-tech assets**, qualifying under the Industry 4.0 Plan, the tax credit amounts to (i) 40% of the purchase cost for investments up to €2.5 million and (ii) 20% of the purchase cost for investments from €2.5 to €10 million. No additional tax credit is provided for investments over €10 million.
- ▶ **For new software related investments** (i.e., software, information technology systems and platforms) related to the Industry 4.0 Plan, the tax credit amounts to 15% of the purchase cost with a maximum annual investment amount of €700,000.

A third-party appraisal is required in the case of any Industry 4.0 Plan purchase (high-tech and software related) with a value higher than €300,000.

In order to qualify for this measure, the Law sets forth that the assets have to be purchased in the period from 1 January 2020 to 31 December 2020, with an extension to 30 June 2021, provided that purchase orders are accepted by the seller by 31 December 2020 and at least 20% of their price is paid by the same date.

The tax credit applies in five equal annual installments (three equal installments for software-related investments), as of the year following the one in which the assets come into operation (and have the requirements provided by the Industry 4.0 Plan).

The new regime applies starting from the FY following the one in effect on 31 December 2019 (i.e., FY 2020 for calendar year entities).

Tax credit for Research and Development (R&D)

The Law amends the existing R&D tax credit as follows:⁶

- ▶ The benefit is no longer limited to the incremental cost compared to the 2012-2014 average as, now, it directly applies to the qualifying cost incurred in the relevant FY (with the cost bases being subject to possible adjustments depending on the nature of the expense).
- ▶ A minimum cost threshold (previously set at €30,000) is no longer required.
- ▶ New tax credit rates (previously applied at 50% and 25%) are introduced depending on the type of expense.
- ▶ The benefit is extended, for FY 2020 only, to expenses for technological innovation and design.

According to the new regime, which generally applies starting from the FY following the one on going on 31 December 2019 (i.e., FY 2020 for calendar year entities), the eligible R&D activities are classified into three different categories and the measure of the tax credit changes for each category as follows:

- ▶ **R&D activities:** the tax credit amounts to 12% of the eligible expenses with a maximum annual amount granted to each company of €3 million.
- ▶ **Technological innovation:** the tax credit amounts to 6% of the eligible expenses (raised to 10% in the case of ecological transition or if the relevant activity qualifies as a digital innovation under the mentioned Industry 4.0 Plan) with a maximum annual amount granted to each company of €1.5 million.
- ▶ **Design activities** carried out by companies in the textile and fashion, footwear, eyewear, goldsmith, furniture and ceramics sectors, for the design and manufacture of new products and samples: the tax credit amounts to 6% of the eligible expenses with a maximum annual amount granted to each company of €1.5 million.

Under the new provision, the tax credit is applied in three equal annual installments (and no longer in one FY), as of the FY following the one in which the relevant expenses have been incurred.

The need of a technical appraisal illustrating the R&D projects and certifying the eligible expenses is confirmed.

Revamping of a special regime to step up Italian participations

The Law revamps a one-off opportunity for resident individuals and nonresident entities (not owning the relevant participation via an Italian permanent establishment) to elect for a tax step-up of participations in unlisted Italian companies held as of 1 January 2020 through the payment of an 11% substitute tax.

The provision may be of specific interest to foreign entities which could realize a capital gain subject to corporate income tax in Italy (at 26%) and not be eligible for exemption under an applicable bilateral tax treaty.

The basis of the substitute tax is represented by the value of the participation as of 1 January 2020 and needs to be certified by a sworn appraisal prepared no later than 30 June 2020.

The substitute tax may either be paid in full by 30 June 2020 or through three annual installments beginning 30 June 2020 (with the second and third installments due by 30 June 2021 and 30 June 2022 and subject to an annual 3% interest surcharge).

Revamping of a special regime to step up business assets

Election for Asset Revaluation

The Law revamps a one-off opportunity for Italian General Accepted Accounting Principles companies (ITA GAAP companies) to reevaluate business assets for accounting and tax purposes (Asset Revaluation).

The election may apply to tangible and intangible fixed assets (i.e., trade goods and immovable properties held by real estate trading companies are excluded) as well as to qualifying shareholdings (i.e., resulting in at least 20% voting rights in the ordinary shareholding meeting of the relevant subsidiary and accounted for as financial assets), provided that the mentioned assets are included in the balance sheet related to the period ongoing on 31 December 2018.

Companies can pick and choose the category of assets to be revaluated (however, all the assets of a same category shall be revaluated with no pick-and-choose option) through the payment of a substitute tax now reduced to 12% (from 16% under last year's version) for amortizable/depreciable assets and reduced to 10% (from 12% under last year's version) for non-amortizable/non-depreciable assets. The payment of the substitute tax results in a higher tax base allowing: (i) depreciation/amortization at an aggregate rate of 27.9% (i.e., corporate income tax plus local tax); and (ii) a lower taxable gain in the case of disposal of the assets.

The Asset Revaluation is to be made in the FY 2019 Financial Statement.

Tax recognition of the new values for amortization/depreciation purposes occurs starting from the third FY following the one with reference to which the Asset Revaluation was made (e.g., from January 2022 for calendar year companies). Tax recognition for capital gain purposes occurs starting from the fourth FY following the one with reference to which the step up was made (e.g., from January 2023 for calendar year companies).

The equity reserve created as a consequence of the accounting Asset Revaluation can be freely distributed provided that a 10% substitute tax is paid.

As to the timing of the substitute tax payment, for amounts up to €3 million, companies may elect for three annual installments, while for amounts exceeding €3 million, companies may elect for six biannual installments. The first installment is due (in both cases) by the deadline for the CIT balance payment for FY 2019 (i.e., 30 June 2020 for calendar year companies). The subsequent payments are due, in the case of three annual installments, by the corresponding CIT balance deadline of the two following FYs, while, in the case of six biannual installments, installments are due by the CIT balance deadline and by the CIT second advance deadline of the two following FYs.

Election for Asset Realignment

The Law also allows the ability to realign the tax value of the assets to their current accounting value, if higher. The substitute tax rates (with the relevant payment rules) and the recognition timing are the same as the ones provided for the Asset Revaluation regime (see above) with the only exception of immovable properties for which the higher values are recognized as of the FY ongoing on 1 December 2021.

While, as mentioned, the Asset Revaluation is only available to ITA GAAP companies, the Asset Realignment is also available to International Financial Reporting Standards (IFRS) companies.

Plastic Tax

The Law introduces a green-new-deal measure represented by a specific indirect tax levied at €0.45 per kilo of plastic contained in non-recyclable packaging products (Plastic Tax).

The Plastic Tax is not yet in force. An implementing decree should be issued by May 2020 and the provision should enter into force starting from the first day of the second month following the date of publication of the decree.

Sugar Tax

The Law introduces a tax on certain sweetened soft drinks levied at €10.00 per hectoliter in the case of finished products and at €0.25 per kilo in the case of products to be diluted prior to use.

The Sugar Tax is not yet in force. An implementing decree should be issued by August 2020 and the provision should enter into force starting from the first day of the second month following the date of publication of the decree.

Deduction of the Municipal Property Tax (IMU)

The Law increases from 40% to 50% the deductibility from CIT of the IMU relating to immovable properties qualifying as capital assets (i.e., not trade assets). The new rate applies for the FY following the one ongoing on 31 December 2018 (i.e., FY 2019 for calendar year entities). The deduction rate will increase to 60% for FYs 2020 and 2021, and to 100% as of FY 2022 onwards.

Endnotes

1. See EY Global Tax Alert, [Italy approves 2019 Budget Law](#), dated 7 January 2019.
2. See EY Global Tax Alert, [Italian Parliament introduces urgent measures for economic growth](#), dated 20 May 2019.
3. Positive equity adjustments mainly include contributions in cash (also in the form of waiver of certain shareholder debt) and setting aside of profits to available reserves, while any assignments to the shareholder (e.g., dividend distributions, repayment of capital reserves) represent a reduction of qualifying equity. Equity reductions may also occur under specific anti-avoidance clauses, e.g., in the case of cash contributions or provision of loans to related companies, acquisitions of participations in related companies and acquisition of going concerns from related companies. Anti-avoidance clauses may also prevent certain events from triggering a qualifying equity increase such as cash contributions from a nonresident company controlled by an Italian company or cash contributions from foreign low-taxed entities. Clearance from anti-avoidance provisions may be obtained by way of a ruling if it can be demonstrated that there is no benefit duplication.
4. For a more detailed description of the new Italian DST, see EY Global Tax Alert, [Italy's unilateral Digital Services Tax advances](#), dated 8 November 2019.
5. See EY Global Tax Alert, [Italian Parliament approves 2017 budget law](#), dated 16 December 2016.

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