

Italian Parliament introduces urgent measures for economic growth

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Executive summary

The Italian Government issued Law Decree n. 34/2019 (the Decree),¹ which provides urgent measures for economic growth including amendments to some existing tax regimes.

The Decree has been in force as of 1 May 2019 although it needs to be converted into Law (potentially with some changes) by the Italian Parliament within 60 days. If not converted (which is unlikely), it will lose any effect retroactively.

The main tax measures include:

- ▶ Repeal of the reduced Corporate Income Tax (CIT) of 15% and introduction of a new reduced CIT rate on certain qualifying taxable income
- ▶ Amendments to the Patent Box regime
- ▶ Special regime to step-up the tax value of goodwill and other assets arising from certain corporate reorganizations
- ▶ Extension of the 30% extra-amortization regime for certain tangible assets purchased between 1 April 2019 and 31 December 2019
- ▶ Higher deduction of Municipal Tax on immovable properties for CIT purposes

Detailed discussion

Repeal of the reduced 15% CIT and introduction of a new favorable regime

The reduced CIT rate of 15% - introduced with the 2019 Budget Law - has been fully repealed and a different measure has been introduced.²

As of fiscal year (FY) 2019 (for calendar year entities), companies meeting certain prerequisites will benefit from a reduction of the standard 24% CIT on the portion of their taxable income corresponding to the prior years' (starting from 2018) retained earnings allocated to a qualifying distributable reserve (Qualifying Taxable Income) as of the end of the period in which the taxpayer benefits from the regime (the Tax Period).

However, the Qualifying Taxable Income cannot exceed the increased value of the net equity as at the end of the Tax Period (Increased Equity). The Increased Equity is computed as the difference between: (i) the net equity of the Tax Period (net of any income/loss of the Tax Period and of any prior FYs retained earnings that already gave rise to the benefit); and (ii) the net equity as of 31 December 2018 (net of the income/loss of that period).

As for the reduction of the rate applicable to the Qualifying Taxable Income, the statutory CIT rate is decreased by the following percentages:

- ▶ Reduction of 1.5% for FY 2019 (i.e., CIT rate set at 22.5%)
- ▶ Reduction of 2.5% for FY 2020 (i.e., CIT rate set at 21.5%)
- ▶ Reduction of 3% for FY 2021 (i.e., CIT rate set at 21%)
- ▶ Reduction of 3.5% starting from FY 2022 onwards (i.e., CIT rate set at 20.5%)

The Decree allows the carryforward of any excess of retained earnings not used for the computation of the Qualifying Taxable Income. In the case of a fiscal unit, the Qualifying Taxable Income is: **a)** determined by each company participating in the fiscal unit; and **b)** used at the controlling company level for the computation of the consolidated tax burden.

An implementing Ministerial Decree should be issued after the conversion of the Decree.

Amendments to the Patent Box regime

The Decree provides for some procedural amendments to simplify access to the Italian Patent Box regime.³

As of FY 2019, taxpayers can autonomously determine the amount of the income deriving from the qualifying intellectual property (IP) without filing a request for an advance agreement (Ruling) with the Italian tax authorities (ITA), as mandatorily required under the old rules in the case of internal use of any qualifying IP. Companies intending to elect the regime through such alternative procedure are required to split the exempt IP related income in three equal installments to be included in the CIT and local tax (*Imposta Regionale sulle Attività Produttive*, IRAP) returns of the FY in which the taxpayer elects for such regime and in the following two.

The taxpayer may benefit from a penalty protection regime provided that it prepares a set of documentation (Patent Box documentation) describing and supporting the criteria adopted to determine the income benefitting from the regime and by including all the information related to such self-determination.

The new provisions are also applicable to taxpayers that have already filed a ruling with the ITA without having concluded the relevant agreement.

Implementing instructions are expected to be issued by 90 days after the entry into force of the Decree (i.e., by the end of July 2019).

Special regime to step-up the tax value of goodwill and other assets arising from certain corporate reorganizations

The Decree introduces an opportunity for Italian companies to step-up the value of the business assets for tax purposes.

As of 1 May 2019 and until 31 December 2022, Italian companies may step-up for tax purposes the value of goodwill and other (intangible or tangible) assets arising from mergers, demergers and contributions of going concerns (the Transaction). The tax step-up is automatically granted up to a maximum amount of €5 million and is not subject to the payment of any substitute tax, provided that the following circumstances occur at the same time:

- ▶ The Transaction must involve companies that have been operating for at least two years.
- ▶ The entities involved in the Transaction must not be part of the same corporate group.
- ▶ The regime is not applicable to Transactions between related companies, i.e., linked by a participation higher than 20%.

The above conditions must be met by the involved companies during the two years prior to the Transaction.

The recognition of the new tax values for depreciation and amortization purposes occurs as of the fiscal year following the one in which the Transaction has been implemented.

The recognition for capital gain purposes occurs starting from the fourth year following the one in which the tax step-up was made.

A recapture effect applies if the companies carry out certain transactions in the following four FYs.

Extension of the extra-depreciation regime

The Decree reintroduces the 30% extra-depreciation regime⁴ (i.e., up to a total of 130% tax depreciation) for entities investing in new tangible assets during the period ranging from 1 April 2019 to 31 December 2019 (or 30 June 2020, provided that the purchase orders are accepted by the seller by 31 December 2019 and at least 20% of the price is paid by the same date).

The enhanced depreciation is allowed up to a maximum amount of €2.5 million investments.

Higher deduction of the Municipal Tax (MT) on Immovable Property for CIT purposes

The Decree provides for a higher deduction of the MT on Immovable Property for CIT purposes. The deduction is allowed only with reference to MT paid in relation to immovable property used in connection with the business activity.

As for the CIT deduction, the MT is deductible by the following rates:

- ▶ 50% for FY 2019
- ▶ 60% for FYs 2020 and 2021
- ▶ 70% as of FY 2022

The MT flat deduction at 40% - introduced with the 2019 Budget Law - has been totally repealed and replaced by the above rates.

Endnotes

1. Issued on 30 April 2019.
2. See EY Global Tax Alert, [Italy approves 2019 budget law](#), dated 7 January 2019.
3. See EY Global Tax Alerts, [Italian Parliament approves budget law for 2015](#), dated 2 January 2015, [Italian Government makes improvements to Patent Box regime](#), dated 27 January 2015, and [Italy issues implementing decree on Patent Box](#), dated 10 August 2015.
4. See EY Global Tax Alerts, [Italian Parliament issues budget law for 2016 including Country by Country Reporting and other important tax measures](#), dated 31 December 2015, and [Italy approves 2018 Budget Law](#), dated 29 December 2017.

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