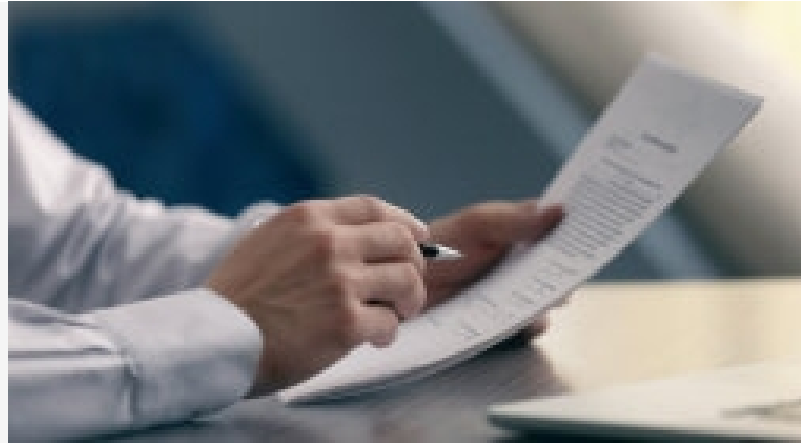


ITALIAN “GROWTH DECREE”

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INTRODUCTION

The so-called “Growth Decree”, Law Decree n. 34, published on 30 April 2019 in the Italian *Official Gazette* and effective from 1 May 2019 (“Decree”), introduces several provisions aimed at boosting the Italian economy.

This note aims to provide a brief analysis of the Decree’s main tax and corporate provisions, in particular:

1. the reintroduction of 30% enhanced depreciation;
2. the reduced rate of corporate income tax on retained profits;
3. enhanced deductibility of the Italian property tax (known as IMU); and
4. the reintroduction of a free tax step-up for business combinations.

1. Enhanced Depreciation

Art. 1 of the Decree reintroduces [1] the enhanced temporary depreciation deduction for corporate income tax purposes for new capital assets purchased from 1 April 2019 to 31 December 2019 by companies and professionals.

More specifically, the relevant acquisition cost for relevant investments of up to €2.5m is increased by 30% for the purposes of determining annual depreciation and leasing rate deductions.

The benefit is also extended to relevant investments made by 30 June 2020 if both of the following conditions are met by 31 December 2019:

- the relevant order is accepted by the seller; and
- an instalment of at least 20% of the overall purchase price is

The following assets are outside the scope of enhanced depreciation:

- vehicles and other means of transport;
- buildings and constructions; and

- intangible assets.

2. Reduced IRES rate on retained profits

Art. 2 of the Decree repeals the so called “Mini-IRES” tax incentive [2], previously introduced by Law. No 145/2018 (Italian Budget Law for 2019), and provides for reduced corporate income tax rates for profits reinvested in the company.

In particular, this tax incentive is applicable to annual corporate taxable income to the extent that:

- previous year profits are set aside to freely disposable reserves [3]; and
- annual net equity exceeds that recorded in the Statutory Accounts for fiscal year 2018 (net of retained earnings which have already benefitted from the reduced rate in previous years).

Instead of the ordinary 24% IRES rate, the reduced rates for the relevant fiscal years are as follows:

- for FY2019: 5%;
- for FY2020: 5%;
- for FY2021: 21%; and
- from FY2022 onwards: 5%.

Reduced IRES rates also apply to individuals performing business activities and can be combined with others tax incentives. Individuals and companies using flat tax regimes are not eligible for reduced IRES rates.

Specific rules apply to companies in fiscal units and corporate shareholders of companies that are treated as tax-transparent.

Further guidance on the reduced IRES rate is expected from the Italian Tax Authority.

3. Enhanced deductibility of IMU

Pursuant to Art. 3 of the Decree, deductibility for IRES purposes of IMU relating to real property qualifying as capital assets is increased to up to 70% of the amount of IMU paid (up from 40%).

In particular, deductibility rates will gradually increase as follows:

- 50% for FY2019;
- 60% for FY2020 and FY2021; and
- 70% from FY2022

4. Tax step-up for business combinations

Art. 11 of the Decree reintroduces [4] a tax benefit in the form of a derogation from the general principle of Italian law under which business combinations (i.e. M&A transactions) are neutral for corporate tax purposes.

More specifically, the Decree allows companies involved in mergers, demergers or contributions of going concerns, carried out between 1 May 2019 and 31 December 2022, to obtain a free tax step-up in the acquisition cost of the relevant assets.

The increased accounting value of goodwill and capital assets (tangible and intangible) resulting from the relevant combination is recognised for both corporate and regional tax purposes.

However, this is applicable only to step-up value recognised on goodwill and fixed tangible/intangible assets not exceeding €5m.

This benefit is granted from the fiscal year following the one in which the business combination is carried out if the entities involved:

- have been incorporated for at least two years before the transaction;
- are not part of the same group;
- are not related by ownership (i.e. no more than a 20% participation); and
- are not under the control, even indirectly, of the same entity.

To counter tax avoidance, the tax step-up is forfeited if, within four years after the relevant transaction, the benefitting company carries out a further business combination or transfers the capital assets for which a step-up has been recognised. However, the company can seek a tax ruling from the Italian tax authority that the step-up will not be forfeited for reasons of tax avoidance.

CONCLUSIONS

The Decree has to be converted into law within 60 days of 1 May 2019, the date on which it entered into force. The possibility of amendments to the tax provisions analysed in this briefing during the conversion phase cannot be ruled out.

[1] Previously introduced by Law. No 208/2015 (Italian Budget Law for 2016).

[2] This tax incentive, which never entered into force, applied a reduced 15% corporate income tax rate to profits reinvested in capital assets/job creation.

[3] Reference is made to reserves made up of profits realized according to art. 2433 of the Italian Civil Code.

[4] This incentive was previously introduced by Law no. 296/2006, art. 1, paragraphs 242 to 249, and by Law Decree no. 5/2009, art. 4.

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