

MAIN TAX MEASURES INTRODUCED BY LAW NO. 197 DATED 29TH DECEMBER 2022

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1. ONE-OFF WINDFALL TAX

Art.1, paragraphs 115–121, of Italian Budget Law 2023 introduced a one-off solidarity contribution (“windfall tax”) applying to energy companies. In particular, windfall tax is due by entities that derived at least 75% of 2022 revenues from production, sale of electricity, natural gas and oil products and is not deductible for corporate and local income tax purposes.

"The Italian Budget Law 2023 has introduced several tax provisions, many of which are highlighted in this briefing."

The relevant computation is determined as follows:

- 50% of fiscal year 2022 taxable income that exceeds at least 10% of the average of the taxable income for the previous four fiscal years (i.e. FYs 2018-2021); and
- ordinary deadline for the payment is the sixth month following the fiscal year end (i.e. 30 June 2023 for calendar-year companies).

Windfall tax cannot exceed the 25% of the equity company’s amount of fiscal year 2021. However, certain additional exemptions may apply.

2. SUBSTITUTIVE TAX ON FOREIGN RETAINED PROFITS

Art.1, paragraphs 85–95, of Italian Budget Law 2023 introduced a substitute tax applicable on the undistributed profits of subsidiaries resident in low-tax jurisdictions that are subject to favorable tax regimes which are in principle, excluded from the participation exemption regime. The substitute tax rate is applied in lieu of ordinary income tax (“IRES”) at the following rates:

- 9% for Italian companies on the amount of retained profits related to subsidiaries located in low tax countries resulting from the fiscal year 2021 financial statements; and
- 30% for individuals.

A further reduced substitute tax (6% for Italian companies, 27% for individuals) would apply if the following additional conditions are met:

- i. dividends are distributed within the deadline of 2023 balance payment; and

- ii. a specific equity reserve is accrued in the financial statements for at least two fiscal years.

3. CAPITAL GAINS TAX BY DISPOSAL OF ITALIAN REAL ESTATE COMPANIES INVESTMENTS

Art.1, paragraphs 96–99, of Italian Budget Law 2023 introduced taxation of capital gains for non-resident shareholders by disposal of certain Italian and non-Italian participations if the higher part (more than 50%) of the participated entity value is constituted by real estate assets located in Italy.

In particular, such provision reflects OECD guidelines concerning capital gain taxation that are already applicable in other jurisdictions. To this extent, the relevant capital gains would be subject to 26% taxation.

This provision may have an effect on a foreign company with a tax residence in countries without a double taxation treaty (“DTT”) with Italy and there is no specific provision in the existing DTT to manage gains derived from the sale of participations whose value is mainly represented by Italian real estate assets. Italy’s ratification of the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) may change the implications of this provision for foreign companies.

The following are out of the scope for the purpose of this provision:

- the participations of Italian and non-Italian companies listed in regulated markets; and
- the European Union collective investment undertakings when they are subject to the form of supervisor regulated by specific law.

4. STEP-UP FOR PARTECIPATIONS AND LAND

Art. 1, paragraphs 107 – 109, of Italian Budget Law 2023 introduced the option of a tax step-up for Italian participation (listed and unlisted) and land held as of 1 January 2023. The substitute tax may be applied to the market value applied at the 16% rate.

The payment must be made in full by 15 November 2023 or through three annual installments starting from 15 November 2023 with the second and third instalments subject to a 3% interest rate.

5. PE EXEMPTION FOR INVESTMENT MANAGEMENT ACTIVITIES IN ITALY

Art. 1, paragraph 255, of Italian Budget Law 2023 introduced a significant amendment to the domestic definition of permanent establishment (“PE”). Under the following circumstances, activities performed by asset managers may not trigger the presence of a PE in Italy:

- the investment vehicle and its controlled companies are resident for tax purposes or located in a white listed jurisdiction;
- the investment vehicles can be considered independent by foreign investment vehicles (further guidance to be provided by MEF);
- the asset manager has no position in the administrative and control companies or economic interest in the foreign investment vehicle. Furthermore, the asset manager does not hold profit participation higher than 25%; and

- the asset manager is remunerated in accordance with the arm's length principle and proper evidence of this can be provided on request.

6. SETTLEMENT OF TAX ASSESSMENT PROCEDURES AND PENDING LITIGATION

Art. 1, paragraphs 153–252 of the Budget Law 2023 includes several measures to facilitate the settlement of pending tax disputes, including:

- special voluntary settlement procedure: this introduces the possibility for taxpayers to voluntarily settle tax returns filed for fiscal years in progress as of 31 December 2021 and previous fiscal years. The penalties due by taxpayers are reduced to 1/18;
- settlement of tax assessments: This allows the settlement of certain assessment procedures with a reduction of penalties of 1/18. In particular, the main procedures covered by this section are:
 - tax assessments not yet appealed by taxpayers as of 1 January 2023;
 - tax assessments notified to taxpayers by 31 March 2023; and
 - final tax audit reports of which a taxpayer is notified by 31 March 2023.
- settlement of pending tax litigation: this allows for the settlement of pending tax disputes with the Italian Tax Authority on 1 January 2023. The percentage of taxes due changes in relation to which grade of tax court is still pending (i.e. the first level tax court, second level tax court or the Supreme Court).

CONCLUSION

Although the Budget Law 2023 entered into force on 1 January 2023, some of the provisions discussed in this article require the publication of relevant implementing measures before they come fully into force. Relevant guidance and clarifications are expected to be issued by the Italian Tax Authority.

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