

Budget Law 2020 – a corporate tax overview

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Parliament passed the Budget Law for 2020 (the Budget Law) and a related tax law decree (the Tax Decree) at the end of December 2019; most of the new provisions apply as of 1 January 2020 or will apply during 2020. This article summarises the main changes applicable to corporate entities.

Reintroduction of ACE benefit

The 2019 Budget Law abolished the Allowance for Corporate Equity (ACE), but it has now been reinstated retroactively for the 2019 tax period and subsequent tax years.

Under this regime, Italian-resident companies and permanent establishments of non-resident companies may deduct notional interest (1.3%) from their corporate income taxable base. The notional interest deduction is calculated on net equity increases with respect to net equity in 2010 financial statements. The net equity increase is calculated as the difference between any equity increase (equity contributions or retained earnings) and items resulting in the reduction of the company's net equity (eg, dividend distribution) in the considered tax year.

ACE deduction exceeding the taxable income for a fiscal year can be carried forward to future tax periods or converted into a regional production tax (IRAP) credit to be offset in five equal instalments.

Financial institutions and insurers – deferral of allowances

The Budget Law includes provisions aimed at deferring certain allowances (ie, write-downs, losses relating to receivables and allowances for losses on receivables booked as a result of the first-time adoption of the new International Financial Reporting Standards (IRES) 9) for IRES and IRAP purposes for financial institutions and insurers. The new provisions will affect the actual yearly cash out of financial institutions and insurers, where economic effects should not be material.

Web tax

The 2019 Budget Law provided for a tax on digital services to be implemented via a ministerial decree, but it did not enter into force and was one of the main points of the new Budget Law. In detail, a 3% tax on digital services (the Web Tax) applies as of 1 January 2020 to companies that, on a stand-alone basis or at group level, generated a turnover of at least €750 million in the preceding tax year, of which at least €5.5 million was from Italian qualifying digital services.

The Web Tax is limited to specific sectors and applies to Italian source gross revenues realised through the following activities:

- advertising services through digital media;
- digital platforms allowing users to interact and possibly facilitate the direct supply of goods and services; and
- user data generated via digital media. Such revenues are generally deemed to be Italian sourced if supplied to customers using a digital device in Italy.

Notwithstanding the provisions in force, the Budget Law already provided that the Web Tax could be abolished or amended if (and when) an agreement on the taxation of digital economy is reached at the international level.

Tax on foreign assets held by resident trusts and partnerships

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As of 2020, the tax on financial instruments held abroad (IVAFE) and on foreign real estate (IVIE) also apply to non-commercial entities (including trusts and foundations) and certain Italian tax-resident partnerships.

Tax credits are granted in respect of wealth tax levied abroad on the same financial assets and real estate in an amount not exceeding the IVAFE or IVIE payable in Italy.

New criminal tax liabilities

The Tax Decree has significantly strengthened the criminal penalties applicable to certain tax offences, as provided in Legislative Decree 74/2000. In the case of filing an untrue tax return (with a corresponding reduction of the thresholds to €100,000 from €150,000 of unpaid taxes and €2 million from €3 million of taxable income), the Tax Decree has increased the applicable criminal penalty from one to three years' imprisonment to two to four-and-a-half years' imprisonment.

Further, the Tax Decree provides that some tax crimes (committed as of 24 December 2019) will also trigger corporate liability under Legislative Decree 231/2001 (ie, corporations could be subject to monetary and disqualification penalties together with the seizure of profits from crime).

Legislative Decree 231/2001 notably provides that if certain crimes are committed in the interests of a company (as often happens in the case of tax crimes), the individual and the company may be considered liable since they took advantage of criminal conduct. Companies may avoid liability if, prior to the crime, they adopted and implemented measures to prevent crimes similar to those committed.

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