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## Changes to Patent Box regime

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With Law Decree 146/2021, the Italian government replaced the former "Patent Box" regime (for further details, please see "Main provisions of Patent Box regime"). The new provisions entered into force upon the publication of the decree in the *Official Gazette* on 21 October 2021.

The new provisions modified the nature of the existing regime. There will no longer be a profit-based benefit; rather, the decree translated it into an additional 90% cost deduction for research and development (R&D) costs incurred by Italian taxpayers relating to copyrighted software, patents, trademarks, designs, models and know-how.

In other words, the Patent Box regime will no longer be related to the profits generated by the exploitation of intangible assets, but only to the actual costs deriving from qualified R&D expenses. Consequently, taxpayers may take advantage of the new regime if they are in a loss position or are making a very low profit. The new approach was subject to much discussion; while it will be very attractive for start-ups developing intangibles, it is completely unrelated to taxpayers' economic results.

The type of R&D costs that will be eligible for the additional deduction is still uncertain. A specific decree in this regard will be released by the Tax Administration. In any case, the additional deduction would trigger tax savings of around 25% of the costs aimed at "creating and developing the qualifying intangibles".

Moreover, under the decree provisions taxpayers were entitled to the new Patent Box regime as an alternative to R&D tax credit, foreseen by Law No. 160/2019, to the extent that the previous provisions do not include any limitation in this respect.

It is also worth noting that the decree included trademarks among the eligible intangible assets relating to R&D costs. This was despite the fact that trademarks should no longer be eligible for the benefit under the Organisation

for Economic Co-operation and Development (OECD) guidance on IP regimes and foreseen by action 13 of the OECD base erosion and profit shifting programme.

Election for the new Patent Box regime is irrevocable but renewable, and the taxpayer's option lasts for five tax years.

The possibility to ask the Tax Administration for a tax ruling to establish the actual tax benefit in advance is no longer available. However, taxpayers can benefit from a penalty protection regime if the tax authorities carry out a tax assessment, as long as they can provide supporting documentation during the tax audit.

The 2022 Budget Law provided for additional changes to Decree Law 146/2021 and the final version of the new rule provides for an upgraded deduction of 110%, excluding the application of the benefit to R&D costs connected to trademarks and know-how. In other words, the final regime will be applicable only in connection with costs incurred for the development of software protected by copyright, patents, designs and models.

Moreover, the benefit of the "new" Patent Box regime does not exclude anymore those ones deriving from the R&D tax credit foreseen by Law No. 160/2019 and a recapture of costs incurred in previous fiscal years would be allowed (ie, eligible costs also include those incurred in the previous eight fiscal years before obtaining an industrial property protection).

Finally, the Budget Law seems to clarify that the new Patent Box regime is applicable from 2021, but old regime is still applicable, with regard to past elections by taxpayers.

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