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Recent Developments in International Taxation

Italy

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Introduction

The main amendments to Italian tax legislation generally come every year-end when the financial measure is approved and enacted, and 2020 is no different in this respect, as Law No 160 of 27 December 2019 ('Budget Law 2020') and Law Decree No 124 of 26 October 2019 (converted into law by way of Law No 157 of 19 December 2019; 'Law Decree No 124/2019') marked significant tax law revisions. It is worth noting that in early 2020, the Italian Government enacted additional measures to face the Covid-19 health emergency and to support families, workers and businesses. In particular, Law Decree No 18 of 17 March 2020 (converted into law by way of Law No 27 of 24 April 2020), Law Decree No 23 of 8 April 2020 and Law Decree No 34 of 19 May 2020 (both to be converted into law and thus still subject to amendments): (1) excluded certain taxpayers from the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP) balance payment for 2019 and first advance payment for 2020; (2) repealed VAT and excise duty safeguard clauses, that is, repealed the planned increase of the reduced VAT rate from ten per cent to 12 per cent and of the standard VAT rate from the current 22 per cent to 25 per cent starting from 1 January 2021; the increase of the standard VAT rate to 26.5 per cent starting from 1 January 2022; and the increase of excise duty on fuel starting from January 2021; (3) extended the deadlines for certain tax payments and tax compliance obligations; (4) adopted incentives for equity enhancement and investments; (5) adopted or increased certain tax credits aimed at supporting, inter alia, tenants of business property, investments in research and development in southern Italy, and the implementation of Covid-19 safety measures at workplaces.

Finally, it is worth mentioning the decision of 30 April 2020 C-565/18 (the 'Société Générale case') of the Court of Justice of the European Union (CJEU), which held that the Italian tax on financial transactions is not contrary to the free movement of capital under Article 63 of the Treaty on the Functioning of the EU (TFEU).

Major developments of Budget Law 2020

Re-introduction of the notional interest deduction regime

Budget Law 2020 reintroduced the notional interest deduction regime, the so-called allowance for corporate equity (ACE), starting from the fiscal year in place on 31 December 2018. The regime was adopted in 2011 and subsequently repealed by Law No 145 of 30 December 2018 ('Budget Law 2019'), which – in replacing the ACE regime – provided for a reduced corporate tax rate applicable as of 2019 for companies that decided to retain earnings instead of distributing them (see Cesare Silvani, Italy Report of May 2019); de facto, such a reduced corporate tax rate, now repealed, has not ever been concretely applied.

ACE is a deduction from the taxable income of an amount equal to the percentage of the new capital contributed, starting from a certain date, as contributions made by shareholders or through allocation of profits to disposable reserves. The measure applies to corporate income tax (*imposta sul reddito delle società* or IRES) due by companies, commercial entities and permanent establishments in Italy of foreign entities, as well as to individual income tax (*imposta sui redditi delle persone fisiche* or IRPEF) due by individual entrepreneurs, general partnerships and limited liability partnerships, provided that they apply ordinary accounting.

The basis for calculating ACE is given by the increase in equity compared with that existing at the end of the fiscal year on 31 December 2010. The amount of deductible income is obtained by applying a remuneration coefficient to this basis, which for 2019 was equal to 1.3 per cent.

The ACE regime does not apply to the portion of capital increase that exceeds the net equity reported in the relevant fiscal year. However, any excess can alternatively be:

- carried forward for the purpose of calculating the ACE in subsequent fiscal years; and

- used as a tax credit applying, as appropriate, the IRES or IRPEF rate. In particular, the tax credit can be used for IRAP purposes and must be divided into five equal annual instalments.

Digital services tax

Budget Law 2020 amended the digital services tax (DST) enacted by Budget Law 2019 (see Cesare Silvani, Italy Report May 2019). It was provided that the DST should enter into force starting from 1 January 2020. Indeed, unlike the previous version of the DST laid down in Budget Law 2019, the entry into force of the tax is no longer subject to any implementing decree to be issued by the Ministry of the Economy and Finance.

Therefore, it is provided that taxable persons shall make the first payment of the DST by 16 February 2021 on taxable revenues that they realised during 2020 and shall submit the relevant tax return by 31 March 2021.

Budget Law 2020 also introduced some changes to the provisions enacted by Budget Law 2019, taking over some parts of the European Commission proposal for the directive of March 2018, COM (2018) 148 final (eg, the exclusion from DST of digital interfaces whose exclusive or main purpose is to provide users with digital content, communication services, payment services and reference to the Internet Protocol as a system to allocate the digital revenues to be taxed in Italy).

It is worth mentioning that a sunset clause provides that the DST shall be repealed when the rules stemming from agreements on the taxation of the digital economy reached at international level enter into force.

Plastic tax and sugar tax

Budget Law 2020 introduced two new taxes, the so-called 'plastic tax' and 'sugar tax', to be entered into force starting from 1 July 2020 and from 1 October 2020, respectively, and both deferred to 1 January 2021 by Law Decree No 34 of 19 May 2020. Implementing decrees shall be issued by the Ministry of the Economy and Finance.

The plastic tax applies to the consumption of disposable items that have or are intended to have the function of containment, protection, handling or delivery of goods. The plastic tax is set to €0.45 per kilogram of plastic contained in the disposable item and it is due: (1) for disposable items made in the Italian territory, by the manufacturer; (2) for disposable items from other EU Member States, by the person who buys the products in the exercise of business activity or the transferor, if the disposable items are purchased by a final consumer; and (3) for disposable items from non-EU countries, by the importer. The plastic tax does not apply to compostable disposable items as defined at European level.

The sugar tax applies to the consumption of sweetened soft drinks (finished products or prepared to be used as such after dilution), obtained by adding sweeteners, natural or synthetic, whose overall content is greater than: (1) 25 grams per litre in the case of finished products; and (2) 125 grams per kilogram in the case of products to be diluted. The sugar tax is set to €0.10 per litre for finished products and €0.25 per kilogram, for products to be used after dilution. The sugar tax is due: (1) for sweetened drinks manufactured and/or packaged in the Italian territory, by the manufacturer or the person providing the conditioning; (2) for sweetened drinks from EU countries, by the buyer; and (3) for sweetened drinks imported from non-EU countries, by the importer. The sugar tax does not apply to sweetened drinks sold by the Italian manufacturer in other EU countries or intended for export.

Major developments of Law Decree No 124/2019

Trust

A new provision regarding the tax treatment of income distributions from certain non-resident trusts to Italian beneficiaries, both individuals and non-business entities, has been enacted. In particular, it is provided that:

- the distribution of trust income from fiscally opaque trusts (ie, trusts without identified income beneficiaries, whose income is directly attributed to, and taxed by, the trust itself) established in jurisdictions where they benefit from a low tax regime are taxable in the hands of the recipients (trusts established in EU and European Economic Area (EEA) Member States are excluded from the scope of the rule); and
- all trust distributions qualify as income distributions, unless adequate evidence is provided that capital has been distributed.

Taxation of dividends received by resident non-commercial partnerships (società semplici)

Società semplici are non-commercial partnerships frequently used by individuals as vehicles for holding financial assets (*società semplici* cannot conduct business activities). As a general rule, they are regarded as transparent entities for income tax purposes. In 2019, dividends received by *società semplici* held by individuals were subject to progressive taxation in the hands of partners and therefore treated less favourably than dividends directly received by individuals, who could benefit from 26 per cent flat taxation. Such differential treatment was also a clear departure from the principle of tax transparency of the entity. In order to remove such discriminatory tax treatment, Law Decree No 124/2019 introduced (as from 1 January 2020) the principle according to which dividends received by *società semplici* are treated for tax purposes as if they were received directly by partners ('look-through approach'). Such an amendment raised, however, interpretative issues including the treatment of foreign source dividends paid to *società semplici* for which the application of the 26 per cent tax compared with progressive taxation was unclear. Therefore, with Law Decree No 23 of 8 April 2020, it has been expressly provided that the look-through approach applies to *società semplici* also with respect to dividends paid by foreign-participated companies.

CJEU decision of 30 April 2020 C-565/18 (Société Générale case) regarding the Italian tax on financial transactions (the so-called Tobin Tax)

The CJEU ruled that the Italian tax on financial transactions applied to transactions relating to financial derivative instruments that have shares as 'underlying' securities issued by companies based in Italy does not constitute a restriction on the free movement of capital pursuant to Article 63 of the TFEU. Specifically, the CJEU did not detect any discrimination on the part of the domestic rule as the tax on derivatives with underlying Italian securities is charged to the parts of the transaction regardless of the place where the transaction is concluded or of the country of residence of these parties and of any intermediary who intervenes in the execution of the transaction, provided that the administrative and declarative obligations on non-resident subjects do not give rise to a difference in treatment.