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Recent developments in international taxation: Italy

This report provides an overview of the main Italian tax measures enacted in 2024.

Introduction

The Italian tax reform initiated by Law No 111 of 9 August 2023 marks a significant overhaul of Italy's tax system. This reform, known as the Enabling Law, empowers the Italian government to implement comprehensive changes through delegated legislative decrees within a 24-month period starting from 29 August 2023.

As part of the implementation process, Legislative Decree No 192 of 16 December 2024 ('Decree 192/2024') introduces substantial changes in the areas of corporate and personal income tax. This report focuses on the key provisions introduced by Decree 192/2024 in the following core areas of the Italian corporate tax framework:

- net operating losses (NOLs) carry-forward rules;
- a new safe harbour regime for intragroup transfers of NOLs;
- demergers through spin-off;
- contributions of business assets (going concern);
- intra-EU exchange of shares;
- tax step-up regime in case of group reorganisations; and
- redemption of tax-deferred reserves.

Additionally, Italy enacted further tax measures through Law No 207 of 30 December 2024 (the '2025 Budget Law'), along with other legislative provisions. These are addressed in the subsequent sections of this report.

The key measures introduced by Decree 192/2024

Net operating losses carry-forward rules

Decree 192/2024 introduces significant amendments to Article 84 of Italian Income Tax Code (IITC) governing the rules for the carry-forward of net operating losses (NOLs) in the context of corporate reorganisations and changes in the ownership or control structure. Under the revised framework, the ability for a company to carry forward its NOLs is precluded when:

- a majority of the company's voting rights is transferred; and
- the company undergoes a change in its core business activity either during the fiscal year in which the change of control occurs or within the two fiscal years preceding or following such change. In this respect, the new Article 84(3) clarifies for the first time that a change in the company's core activity is considered to have occurred only if there is a change in the business sector, or in cases of acquisition of a business unit.

However, the above-mentioned limitation rule does not apply if the so-called 'vitality test' is met. In particular, the vitality test is met if the company, during the fiscal year in which the change of control occurred, reported (1) revenues and income from its core business activities exceeding 40 per cent of the average for the two preceding fiscal years, and (2) personnel expenses, including

social security contributions, exceeding 40 per cent of the average for the same two-year period. The former condition relating to the number of employees of the company is now deleted.

If these requirements are jointly met, the amount of NOLs that can be carried forward is capped at the economic value of the company's net equity, as resulting by a sworn appraisal, without taking into account equity injections carried out in the last 24 months. The reference to the economic value of the company's net equity is a new condition introduced by the Decree 192/2024.

The same restriction rules apply to NOLs transferred in the context of merger or demerger transactions.

A new safe harbour regime for intragroup transfer of net operating losses
Decree 192/2024 introduced the new Article 177-*ter* of the IITC, which provides for a safe harbour regime in relation to intragroup transfer of NOLs carried out in the context of intragroup transactions.

In particular, in the context of reorganisation transactions (eg, mergers or demergers), NOLs may be carried forward without any restriction – regardless of whether the so-called 'vitality test' is met – provided that the NOLs were generated during a period in which the entities involved in the transaction were already part of the same group, as defined under the Italian Civil Code. The revised safe harbour regime applies to NOLs generated from fiscal year 2024 onwards. The Ministry of Economy and Finance is expected to issue an implementing decree to clarify the operating aspects of the new rules.

Demergers through spin-off
Following Legislative Decree No 19/2023, which introduced demergers through spin-off (*scissione con scorporo*) to the Italian legal system, Decree 192/2024 added paragraph 15-*ter* to Article 173 of the IITC governing the tax regime applicable to such transactions.

In line with the tax treatment of demergers already provided for under Italian tax law, demergers through spin-off are generally tax-neutral, with no realisation or distribution of gains or losses arising from the assets of the demerged company, including inventories and goodwill.[1]

Finally, the newly introduced paragraph 15-*ter* expressly provides that, in cases where the demerged company is resident in a European Union or European Economic Area Member State, and the spin-off concerns its Italian permanent establishment, which is transferred to a newly incorporated Italian resident company, the allocation of shares in the beneficiary company to the demerged entity does not trigger any tax consequences. The tax neutrality of the transaction applies irrespective of whether the demerged company maintains a permanent establishment in Italy following the transaction.

The new rules apply to demergers carried out from fiscal year 2024 onwards. However, subject to certain conditions, the aforementioned tax neutrality regime may also be applied retroactively to transactions carried out on in the previous fiscal year.

Contributions of business assets (going concern)
Following the amendments introduced by Decree 192/2024 to Article 176 of the IITC, it is now expressly provided that, in the context of business contributions, the goodwill shall be deemed to be transferred to the receiving company not only for accounting and civil purposes but also for tax purposes.

Accordingly, the tax basis of the shares received by the transferor in the receiving company, as consideration for the contribution, includes the goodwill. The receiving company, in turn, is required to continue the amortisation process of the goodwill, based on its residual tax value as previously determined by the transferor.

In light of the above, the prior interpretation adopted by the Italian tax authorities – which excluded goodwill from the computation of the tax basis of the shares received in exchange of the contribution – has now been definitively superseded.

Intra-EU exchange of shares
Decree 192/2024 has significantly expanded the scope of the tax neutrality regime applicable to intra-EU exchanges of shares by contribution to resolve the conflict between the Italian tax legislation and the provisions set forth under Council Directive (EU) 2009/133 of 19 October 2009 (the so-called 'EU Merger Directive').

In particular, the revised Article 178 extended the tax neutrality regime to cases where both the contributed company and the receiving company are resident in the same Member State. Prior to this change, tax neutrality was granted only if the companies involved in the shares exchange were resident in different Member States, thereby limiting such corporate reorganisations within a single country.

This extension of the regime aims to facilitate corporate restructuring within the EU, promoting the free movement of capital and contributing to the consolidation of the internal market. In addition, it is worth noting that under the former version of Article 178 of the IITC, acquisitions of additional shares by a company that already held a controlling interest could qualify for the tax-neutral regime only if the increase in the ownership percentage occurred 'by virtue of a legal obligation or a statutory constraint'.

Decree 192/2024 removed this condition, and the revised version of Article 178 of the IITC now provides that the tax neutrality regime applies in all cases where a company acquires or increases its control in the contributed company, regardless of whether the increase results from a legal obligation or a statutory constraint. The same treatment has been introduced in relation to domestic exchanges of shareholdings by contribution.

The new rules apply to transactions carried out from the 2024 fiscal year onwards.

Tax step-up regime in case of group reorganisations
Decree 192/2024 amends Article 176, paragraph 2-*ter* of the IITC regarding tax step-up regimes in the context of group reorganisations. The revised elective regime under Article 176, (2-*ter*) is now the sole step-up mechanism available to Italian companies for group reorganisations occurring from 1 January 2024 onwards.

In particular, upon the payment of a substitute tax, entities involved in tax-neutral group reorganisations – such as mergers, demergers or business contributions – may benefit from a tax step-up to the higher book value of tangible or intangible fixed assets recorded in the financial statements as a result of the transaction.

The substitute tax is levied on the amount of the increased value subject to the step-up, at a rate of 18 per cent for corporate income tax (IRES) and 3 per cent for Italian regional tax on productivity activities (IRAP) purposes. The election must be made in the tax return for the fiscal year in which

the reorganisation occurs. The substitute tax must be paid by the deadline for the payment of the balance of income taxes due for the fiscal year in which the reorganisation occurs.

Redemption of tax-deferred reserves
Decree 192/2024 introduces an extraordinary option to redeem, in whole or in part, tax-deferred reserves recorded in the financial statements for the fiscal year ending 31 December 2023, which remain at the end of the fiscal year ending 31 December 2024, upon payment of a substitute tax at a 10 per cent rate for IRES and IRAP purposes.

This relief is particularly attractive for companies having previously carried out tax revaluations of assets without redeeming the related revaluation surplus (*saldo attivo di rivalutazione*) and now intend to distribute the tax-deferred reserves to shareholders.

Furthermore, Decree 192/2024 empowers the Italian Ministry of Economy and Finance to issue a decree setting out the implementing provisions for this regime.

2025 Budget Law – key developments

Amendments to digital services tax
Article 1, paragraph 21 of the 2025 Budget Law introduces amendments to certain provisions of the digital services tax (DST) set forth in Article 1, paragraphs 35 *et seq*, of Law No 145 of 30 December 2018. The DST is levied at a rate of 3 per cent on the amount of taxable revenues deriving from digital services.

Under the prior legal framework, the DST applied to entities carrying out business activities that, either individually or at the group level, met both of the following thresholds:

- total global revenues exceeding €750m; and
- revenues from digital services provided within Italy exceeding €5.5m.

The 2025 Budget Law abolishes the second threshold pertaining to revenues generated in Italy. Consequently, following these amendments, the DST applies to companies that:

- generate revenues from digital services within the territory of the state, irrespective of the amount; and
- individually or collectively at the group level, have generated a total amount of global revenues of no less than €750m in the preceding calendar year.

Furthermore, the amendments affect the obligations relating to advance and final tax payments. In particular, taxpayers are required to remit an advance payment amounting to 30 per cent of the tax liability assessed for the previous calendar year. This advance must be paid by 30 November of the relevant calendar year; it is calculated by applying the 3 per cent tax rate to the amount of taxable revenues.

Introduction of permanent step-up regime for shareholdings
The 2025 Budget Law introduces, as a permanent measure, the option to elect a step-up in the tax basis of shareholdings.

This election is available to individuals, partnerships, non-commercial entities and non-resident entities without a permanent establishment in Italy. Upon election, taxpayers may increase the tax

basis of their shareholdings by paying a substitute tax of 18 per cent on their fair market value – to be certified by a sworn appraisal – as of 1 January of each year.

The step-up election is not available for Italian participations held by EU or EEA entities that are eligible to apply the Italian participation exemption (PEX) regime (under Article 68 (2-*bis*) of IITC) as from 1 January 2024.

Reduced corporate income tax rate of 20 per cent for companies that invest in certain assets and fulfil certain other conditions
The 2025 Budget Law introduces a reduced corporate income tax (IRES) rate of 20 per cent, applicable under specific conditions as an alternative to the standard 24 per cent rate, exclusively accessible for the fiscal year 2025 (commonly referred to as 'mini-IRES').

To qualify for the mini-IRES regime, taxpayers must fulfil the following requirements:

- allocation of at least 80 per cent of the fiscal year 2024 retained earnings to a designated equity reserve for a minimum period of two years; and
- investment of a specified amount – corresponding to the greater of either 30 per cent of the 2024 retained earnings or 24 per cent of the total earnings for fiscal year 2023 – in new, tangible or intangible assets that qualify under the so-called Italian Industry 4.0[2] and 5.0.[3]

Furthermore, taxpayers are required to increase employment levels within certain thresholds.

Specific recapture provisions apply in the event of distributions of the 2024 retained earnings within the two-year period or if the qualifying assets are disposed of within five years.

Other relevant tax measures
Finally, it is worth addressing some other key tax measures which have been implemented in Italy during 2024.

Penalty protection regime for hybrid mismatch arrangements
The Ministerial Decree of 6 December 2024 sets forth implementing rules regarding the application of the penalty protection regime for hybrid mismatch arrangements in Italy. It governs the structure and content of the required documentation to be prepared and filed by qualifying taxpayers resident or located in Italy to prevent the application of penalties for violations of the domestic rules addressing hybrid mismatches.[4]

In light of the above, no penalty for inaccurate tax returns would apply to taxpayers that prepare the set of the relevant documentation in accordance with the new guidelines in case the tax authority challenges the application of anti-hybrid mismatch rules.

Measures concerning domestic Pillar Two legislation
Significant legislative developments have also been introduced in the context of the Pillar Two framework. In particular, the Ministry of Economy and Finance has issued the following ministerial decrees, in light of the administrative guidance published by the OECD/G20 Pillar II Inclusive Framework:

- Ministerial Decree of 20 May 2024 containing the implementing provisions on country-by-country reporting (CbCR) transitional safe harbour (TSH) regimes;

- Ministerial Decree of 1 July 2024 containing the implementing provisions on the qualified domestic minimum top up tax (QDMTT);
- Ministerial Decree of 11 October 2024 containing the implementing provisions on the substance-based income exclusion rule (SBIE);
- Ministerial Decree of 20 December 2024 containing miscellaneous provisions on the global minimum tax;
- Ministerial Decree of 27 December 2024 containing the implementing provisions applicable to the transition year; and
- Ministerial Decree of 25 February 2025 containing the implementing provisions on the notification of the designated filing entity to the Italian tax authorities.

Article 9 of Legislative Decree No 209 of 27 December 2023, which implemented the Council Directive (EU) 2022/2523 of 14 December 2022 (the so-called 'Pillar Two Directive') in Italy, largely mirrors the structure and terminology of the Global Base Erosion Rules ('GloBE Rules'), and provides that it shall be interpreted and applied in the light of the GloBE Rules, the GloBE (Consolidated) Commentary, and the Administrative Guidance. Furthermore, according to Article 1, paragraph 2 of the TSH Decree, the provisions of the TSH Decree shall be interpreted and applied in a manner that ensures compliance with the 'Common Approach' referred to in Article 9 of the Pillar Two Legislative Decree.

Measures related to the domestic cooperative compliance regime

Specific measures were also introduced in relation to the cooperative compliance regime provided for qualifying taxpayers.

In particular, the cooperative compliance regime – governed by Articles 3 to 7 of Legislative Decree No 128 of 5 August 2015, as amended and supplemented by Legislative Decree No 221 of 30 December 2023 and Legislative Decree No 108 of 5 August 2024 – allows for an ongoing dialogue with the Italian tax authorities aimed at preventing and resolving tax disputes prior to the filing of the tax return.

The implementing provisions of the cooperative compliance regime have been established by Ministerial Decree of 6 December 2024. The new application form was approved by the Italian tax authorities with Provision No 450193 of 17 December 2024.

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[1] However, due to the specific features of this type of transaction – which involve the partial demerger of a company into a newly incorporated company, with the transfer of the newly incorporated company's share to the demerged company – the following provisions are not applicable to demergers through spin-off:

- Para 3 of Art 173 governing the effects in the hands of the shareholders of the demerged company;
- Para 7 of Art 173 governing the implications deriving from the backdating of the tax effects of the demerger;
- Para 9 of Art 173 governing the regime of the tax-deferred reserves; and
- Para 10 of Art 173 governing the rule concerning the carry-forward of the tax assets of the demerged company.

[2] See Annexes A and B to Law No 232 of 11 December 2016.

[3] See Art 38 of Law Decree No 19 of 2 March 2024.

[4] In particular, Arts 6 to 11 of Legislative Decree No 142 of 29 November 2018 introduced the anti-hybrid mismatch arrangements rules included in Council Directive (EU) 2016/1164 of 12 July 2016 (ATAD 1) and Council Directive (EU) 2017/952 of 29 May 2017 (ATAD 2).