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New features of the 2020 Budget Law

(Law no. 160 of 27 December 2019)

CONTENTS

The purpose of this Newsletter is to provide a summary of the main tax news of interest to entrepreneurs contained in Law no. 160 of 27 December 2019 ("Budget Law 2020", hereinafter also referred to as the "Law"), published in the Official Gazette no. 304 of 30 December 2019, which entered into force, unless otherwise provided for in relation to specific provisions, on 1 January 2020.

In the title of the various paragraphs - and unless otherwise specified - reference will be made to the Law's legislative structure (in particular, Article 1 consists of 884 paragraphs).

1. Tax credit for investments in new fixed assets (art. 1, paragraph 185 et seq.)

A new tax credit is granted for investments in new tangible and intangible fixed assets, located in production facilities within the State, to replace the super depreciation and hyper depreciation, whose mechanisms have been largely replicated.

Specifically, the amount of the tax credit, which varies according to the nature of the fixed assets to be invested, is as follows:

- 6% of the tax-relevant cost, for investments in tangible assets, up to a maximum of EUR 2 million in eligible costs[1];
- 40% of the tax-relevant cost, for investments in tangible assets functional to the technological and digital transformation of companies according to the "Industry 4.0" model[2], for a total amount of investments not exceeding EUR 2.5 million. The credit is reduced to 20% on the portion of investments over EUR 2.5 million and up to the amount of EUR 10 million, which is the maximum limit of total eligible costs;
- 15 % for investments in qualified intangible assets[3], up to the maximum limit of eligible costs of EUR 700,000.

As for subjective requirements, companies that are not in compliance with safety rules in the workplace and do not comply with social security contribution payments are excluded from the benefit. Companies that are subject to disqualification sanctions pursuant to Article 9, paragraph 2 of Legislative Decree no. 231/2001[4] are excluded as well.

The new tax credit is available for purchases made in 2020 or until 30 June 2021, but only on the condition that by 31 December 2020, the relevant purchase order has been accepted by the seller and an advance payment of at least 20% of the purchase cost of the goods has been made.

The tax credit is divided into five equal annual instalments for tangible assets and into three equal annual instalments for intangible assets, and can be used (i) from the year following the year in which the "ordinary" tangible assets come into operation, and (ii) from the year following the year of interconnection in relation to investments in "Industry 4.0" tangible assets and intangible assets.

The use of the credit must necessarily take place by means of offsetting in the F24 model; in this regard, neither of the following limits apply: the EUR 250,000, provided for claims to be indicated in the RU form of the tax return, nor the limit of EUR 700,000 provided in general for "horizontal" offsetting. The prohibition of offsetting is also excluded in the case of tax liabilities for which the relevant payment term has expired.

The tax credit is not transferable, not even under the tax consolidation regime, and does not determine IRES and IRAP taxable base. In addition, the tax credit is not included in the computation of the pro rata deductibility of interest expense and general expenses.

Furthermore, in relation to investments in tangible assets "Industry 4.0" and intangible assets, a technical appraisal must be produced (which can be replaced by a declaration made by the legal representative for assets with a unit cost not exceeding EUR 300,000) to certify that the asset meets the benefit's requirements

1 The vehicles referred to in the first paragraph of Article 164 of the Tuir and assets with a depreciation rate of less than 6.5% (real estate and others) are excluded. For investments made through financial leasing contracts, the cost incurred by the lessor for the purchase of the assets is taken into consideration.

2 Eligible tangible assets are listed in Annex A attached to Law no. 232 of 11 December 2016 (Budget Law 2017) on tangible assets that could benefit from hyper depreciation.

3 Intangible assets eligible for the benefit are listed in attachment B to the 2017 Budget Law relating to intangible assets that could benefit from super depreciation. Article 1, paragraph 190 of the Law adds that the costs of services relating to the use of the assets listed in Appendix B through cloud computing solutions, for the portion attributable on an accrual basis, are also eligible.

4 The disqualification sanctions are: a) disqualification from carrying out the activity; b) suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; c) prohibition to contract with the public administration, except for obtaining the services of a public service; d) exclusion from grants, financing, contributions or subsidies and the possible revocation of those already granted; e) prohibition to advertise goods or services.

and that it has been interconnected with the company system.

Finally, there is a special recapture system if the assets are sold or relocated within the second financial year following the purchase and are not replaced by assets with similar or superior technological characteristics. In such cases, the portion of the tax credit relating to the asset transferred or relocated must be paid back within the deadline for payment of the balance of the taxes due for the tax period in which the transfer or relocation takes place, without the payment of penalties and interest.

For control purposes, and under penalty of revocation of the benefit, it is obligatory to keep the appropriate documentation to demonstrate the actual occurrence and the correct determination of the relevant costs. To this end, invoices and other documents relating to the acquisition of the assets must bear reference to the regulatory provisions governing the tax credit. For monitoring purposes, in relation to each eligible tax period, a communication must also be sent to the Ministry of Economic Development, whose content, methods and terms of filing will be ruled by a future decree.

2. Tax credit for research, development and innovation (art. 1, paragraph 198 et seq.)

In place of the rules in force until the 2019 fiscal year, based on a mechanism for comparing expenses of the year with those incurred in the previous three-year reference period, a new tax credit is introduced, starting from the 2020 tax period, for investments in qualified industrial research activities, experimental development in science or technology, technological innovation, as well as design and aesthetic conception carried out by companies operating in the textile and fashion, footwear, eyewear, goldsmithing, furniture and ceramics sectors for the conception and creation of new products and samples.

Specifically, the measure of the tax credit is equal to:

- 12%, within the limit of EUR 3 million, for expenses incurred in research and development activities;
- 6%, within the limit of EUR 1.5 million, for expenses incurred in technological innovation activities;
- 6%, within the limit of EUR 1.5 million, for expenses incurred in design and aesthetic design activities;
- 10%, up to a limit of EUR 1.5 million, for expenses incurred in technological innovation activities aimed at creating new or substantially improved products and production processes to achieve an ecological transition or the digital innovation 4.0 objective.

A decree issued by the Ministry of Economic Development will identify the criteria for the correct identification of activities that can be facilitated on the basis of definitions set out by the law, also taking into account the general principles and criteria contained in the OECD's Frascati Manual.

For the purposes of the accrual of the tax credit, eligible expenses are identified as follows:

a) expenses for employees or with a self-employed or other relationship than an employee, directly involved in qualified activities within the company (intra-muros activities). For young people in their first job, with a PhD degree, or enrolled in a PhD programme or with a master's degree, not older than 35 years, hired with an open-ended employment contract, the cost is computed at the rate of 150%;
b) depreciation, leasing instalments, simple leasing instalments and other expenses relating to tangible assets and software used in qualified activities, within the limits of the fiscally relevant cost and the overall maximum limit of 30% of the expenses referred to in point a);
c) expenses for extra-muros research contracts (if the contracts are stipulated with resident universities or research institutes, the cost is computed at the rate of 150%);
d) the amortisation charges relating to the purchase, also under license, from third parties, other than companies belonging to the same group of industrial property rights up to a maximum of EUR 1 million;
e) expenses for consultancy and equivalent services relating to qualified activities, up to a maximum of 20% of the expenses referred to under a) or c);
f) costs for materials, supplies and other similar products, including prototypes or pilot plants used in qualified activities carried out in-house up to a total maximum of 30% of the costs referred to in a) or c).

As for subjective requirements, companies that are not in compliance with safety rules in the workplace and do not comply with the social security contributions payments are excluded from the benefit. Companies that are subject to disqualification sanctions pursuant to Article 9, paragraph 2 of Legislative Decree no. 231/2001[5] are excluded as well.

The tax credit is divided into three equal annual instalments and can be used from the tax period following the accrual period, subject to the fulfilment of the certification obligations by the person in charge of the statutory audit on the actual incurrence of the eligible expenses and their correspondence to the accounting documents prepared by the company.

The use must necessarily take place by means of offsetting in the F24 model; in this regard, neither of

5 See footnote 4.

the following limits apply: EUR 250,000 provided for credits exposed in the RU form of the tax return, nor the limit of EUR 700,000 provided in general for horizontal offsetting.

The tax credit is not transferable, not even under the tax consolidation regime, and does not determine IRES and IRAP taxable base. It is not included in the computation of the pro-rata deductibility of interest expense and general expenses.

The benefit is subject, in addition to the possession of the certification issued by the person in charge of the statutory audit, to the preparation by the project manager of a technical report, countersigned by the legal representative, which illustrates the purposes, content and results of the eligible activities carried out in each tax period.

Finally, for monitoring purposes, a communication will be sent to the Ministry of Economic Development in relation to each eligible tax period. The content, methods and terms of filing will be identified by a specific decree.

3. Reintroduction of the Notional Interest Deduction, "ACE" (art. 1, paragraph 287)

The Law reintroduces the "ACE" incentive (Aid to economic growth) from the tax period following the one in progress as of 31 December 2018 (2019 for "calendar year " entities) and repeals the provisions, which had temporarily introduced the so-called "mini Ires" regime (Article 2 of Decree-Law No 34/2019).

For 2019, the notional interest rate is set at 1.3%.

4. New rules for the IMU and related increase in deductibility for IRES purposes (art. 1, paragraph 738 et seq.)

Starting from 2020, local taxation is redesigned through the repeal of the "Tax for indivisible services" (TASI), which has been absorbed by IMU, also subject to certain amendments.

Among other new features, the basic rate of the IMU for real estate ranges between 0.76% and 0.86% with the possibility for municipalities to increase it up to 1.06% or decrease it to zero. (For municipalities that had already deliberated an increase in the TASI[6] for the years 2015 to 2019, there is also the possibility to increase the IMU rate up to 1.14%). Buildings for productive use classified in cadastral group "D" are provided with a minimum rate of 0.76% reserved for the State.

For luxury houses (classified in cadastral category A/1, A/8 and A/9), the basic rate is determined at 0.5% (with the possibility for municipalities to increase it by a further 0.1%); for instrumental rural buildings, the basic rate is determined at 0.1%; until 2021, for buildings constructed and intended for sale (and not rent) by the construction company, the basic rate is determined at 0.1%, with the possibility for municipalities to increase this rate to 0.25% (from 2022, the IMU will no longer be due for these buildings). For all these categories, the municipalities may decide to reduce the basic rate to zero.

It should be noted that starting from the 2021 fiscal year , municipalities will be able to diversify the base rates mentioned above exclusively with reference to specific cases identified by decree of the Minister of Economy and Finance.

Finally, the Law confirms the deductibility of the IMU relating to instrumental real estate for IRES purposes for the 2019 fiscal year for 50% of its amount (already set by the Legislative Decree no. 34/2019, so called "Growth Decree"), while the percentage of deduction is increased to 60% for the fiscal years 2020 and 2021 until it is fully deductible as from the 2022 fiscal year.

5. Revaluation of long-term assets and tax values step-up regime (art. 1, paragraph 696 et seq.)

The Law confirms the regime that allows OIC adopter business taxpayer to revaluate the value of their long-term assets, excluding short-term real estate and equity investments in subsidiaries and associated companies recorded as fixed assets, by paying a substitutive tax of 12% for assets subject to depreciation and of 10% for assets non subject to depreciation. The possibility to release the revaluation reserve by paying a further substitutive tax of 10% is confirmed as well.

The assets must be booked in the financial statements of the financial year in progress on 31 December 2018, the related revaluation must be carried out in the financial statements of the following financial year (2019 financial statements if the financial year correspond with the calendar year) and it must necessarily refer to all the assets belonging to the same uniform classification. The revaluation must be recorded in the relevant inventory and in the notes to the financial statements.
Unlike the former revaluation law provisions, the substitutive tax may also be paid by instalments: a maximum of three or six instalments depending on

6 See Article 1, paragraph 677, of Law no. 147/2013, which provided for an optional increase for the years 2014-2019 equal to 0.8%.

whether the amount is less or more than EUR 3 million respectively. The amount due, as a result of the revaluation, can also be paid by offsetting tax credits through the F24 form.

The higher value attributed to the assets due to the revaluation is recognised for tax purposes as follows:

(i) for depreciation purposes, as from the third year following that in respect of which the revaluation was carried out;
(ii) for capital gains/losses calculation, realized in case of sale of assets, assignment to shareholders, allocation for purposes unrelated to the business or assigned to the personal or family consumption of the entrepreneur, as from the fourth year following that in respect of which the revaluation was carried out.

Furthermore, the Law confirms, also for IAS adopters, the possibility to obtain recognition for tax purposes of the step-up in the civil values recorded in the financial statements at 31 December 2018. The amount of substitutive tax to be paid to complete the step-up recognition and the effective date for tax purposes are the same as those provided for revaluation purposes. An exception applies for real estate assets for which the higher values are recognised starting form the tax period in progress on December 1, 2021.

6. Supplement on IRES for concession business (art. 1, paragraph 716 et seq.)

Notwithstanding the non-retroactivity principle of tax provisions, laid down in Article 3 of the taxpayer's statute (Law No 212/2000), an IRES surcharge of 3.5 % on income derived from concession activities is introduced from the 2019 tax period until 2021.

In particular, the surcharge is applicable to activities carried out based on (a) motorway concessions, (b) airport management concessions, (c) authorisations and port concessions (referred to in Articles 16 and 18 of Law No 84/94) and (d) railway concessions.

Specific implementing provisions are also provided for parties who have opted for the tax consolidation regime (art. 117 of the TUIR) and tax transparency (art. 115 of the TUIR).

7. Tax credit for training 4.0 - extension and amendments (art. 1, paragraph 210 et seq.)

The tax credit[7] for "training 4.0" initially introduced for the 2018 tax period, subsequently extended to 2019, is further extended with certain amendments to the 2020 tax period.

The relief, which is granted to all enterprises regardless of their legal form, of the industry sector in which they operate and of the accounting system adopted, consists in a tax credit proportional to training expenses of personnel aimed at acquiring or consolidating skills in technologies relevant to the "Industry 4.0" technology development program[8].

Specifically, the amount of the tax credit is proportionate to the size of the enterprise:

- small enterprises, for an amount equal to 50% of eligible expenses, up to a maximum of EUR 300,000 per year;
- medium-sized enterprises, for an amount equal to 40% of eligible expenses, up to a maximum of EUR 250,000 per year;
- large enterprises: for an amount equal to 30% of eligible expenses, up to a maximum of EUR 250,000 per year[9].

Without prejudice to the maximum annual limits, the amount of the credit is increased to 60% in the case of the training of "disadvantaged workers" as defined by the Minister of Labour and Social Policy Decree of October 17, 2017.

Companies that are not in regular compliance with workplace safety rules and do not comply with the social security contributions payments are excluded from the benefit. Companies that are subject to disqualification sanctions pursuant to Article 9, paragraph 2 of Legislative Decree no. 231/2001[10] are excluded as well.

The tax credit can be used starting from the tax period following the one in which the eligible expenses are incurred and exclusively by offset in the F24 form,

7 Introduced by article 1 paragraph no. 46 - 55 of Law no. 205/2017 (Budget Law 2018), later amended by article 1 paragraph no. 78 - 81 of Law no. 145/2018 (Budget Law 2019).

8 These are technologies such as big data and data analysis, cloud and fog computing, cyber security, cyber-physical systems, rapid prototyping, visualisation and augmented reality systems, advanced and collaborative robotics, human-machine interface, additive manufacturing, internet of things and machines and digital integration of business processes, applied in the areas listed in attachment A to Law no. 205/2017 (Budget Law 2018).

9 For the purposes of identifying the size of the enterprise it is necessary to refer to Annex I of Regulation (EU) 2014/651; in particular, a small enterprise is considered one with less than 50 persons and with an annual turnover and/or annual balance sheet total not exceeding EUR 10 million; a medium-sized enterprise is one with up to 250 persons and annual turnover not exceeding EUR 50 million and/or annual balance sheet total not exceeding EUR 43 million.

10 See footnote 4.

pursuant to art. 17 of Legislative Decree no. 241/97. The credit cannot be transferred, not even within entities which have opted for the tax consolidation regime.

For monitoring purposes, a communication must be sent to the Ministry of Economic Development; the related content, methods and deadlines will be identified by a specific decree.

The duty, established by the former legislation, to agree training activities on through corporate or territorial collective agreement is eliminated.

8. Extension of the tax credit regime for SMEs' participation in international trade fairs (art. 1, para. 300)

The tax credit on expenses incurred by SMEs for participation in international trade fairs introduced by the "Growth Decree" (Legislative Decree no. 34/2019) is extended to 2020.

Specifically, companies existing on January 1st, 2019 shall be eligible for a tax credit for an amount equal to 30% of the participation's costs in international trade fairs in Italy and abroad, up to a maximum of EUR 60,000.

9. Refinancing of the Sabatini Law (art. 1, paragraph 226 et seq.)

The Law refinanced the "New Sabatini" relief for SMEs provided by art. 2 of Legislative Decree no. 69/2013 which facilitate the assess to finance and provide for contributions for investments in new instrumental tangible assets, plant and equipment, including "Industry 4.0" investments[11].

For the benefit of micro, small and medium-sized enterprises, a portion of the resources is dedicated to promote purchasing, even by financial leasing, of new instrumental tangible asset, plant and equipment for productive use with low environmental impact, as part of projects aimed at improving the eco-sustainability of products and manufacturing processes. For these operations, the paid out contributions - subject to compliance with State aid EU regulations - are proportionated to interest calculated on the loan at a conventional annual rate of 3.575%.

10.Plastic Tax (art. 1, paragraph 634 et seq.)

With the aim of reducing the production of plastic goods, the Law introduces the so-called "Plastic Tax", i.e. a tax on the consumption of manufactured goods with single use (called "MACSI") which have or are intended to have a function of containment, protection, handling or delivery of goods or food.

The goods included in the MACSI category, described in paragraphs 634 and 635 of the Law (to which reference should be made), generally include plastic products, also in the form of sheets and films, which are non-biodegradable and disposable, therefore with the exclusion of compostable plastic products.

The amount of tax is established in EUR 0.45 for each kilogram of plastic material contained in MACSI, determined based on a quarterly declarations to be submitted to the Customs and Monopolies Agency by the end of the month following the quarter of reference.

The tax obligation arises at the moment of production, final importation into the Italian territory or introduction into the national territory from other EU countries. It becomes payable when released for consumption in the national territory.

In particular:

- for MACSI produced in the territory of the State, the release for consumption occurs when they are transfer to another national subject and the tax is due by the manufacturer;
- for MACSI coming from intra-EU countries, the release for consumption depends on the nature of the purchaser: at the time of purchase in the national territory if the purchase takes place in the exercise of the economic activity; or at the time of sale if the purchase is made by a consumer. In the first case, the tax is due by the acquiring party; in the second case, by the transferor who must appoint a tax representative to fulfil his obligations;
- in the case of supplies from non-EU countries, the release for consumption occurs at the time of their final importation into the national territory and the tax is payable by the importer.

Failure to pay Plastic tax entails a penalty from twice to ten times of the unpaid tax, in any case of a minimum amount of EUR 500.

In conclusion, the Law provides for a 10% tax credit on the expenses incurred from January 1st to December 31, 2020, up to a maximum amount of EUR 20,000, for technological development made in the production of compostable products.

11 These are the contributions referred to in Article 1, paragraph 56, of Law no. 232/2016, against the investments referred to in paragraph 55 of the same article.

11. Cars granted to employees (art. 1, paragraph 632 et seq.)

The method for determining the fringe benefit relating to cars granted for both business and private purposes to employees, provided by art. 51, paragraph 4, letter a) of the TUIR, has been changed and it now takes into account the amount of carbon dioxide vehicles' emissions.

In particular, the fringe benefit, calculated on an average cost of use per km resulting from the official ACI schedules supposing 15,000 km per year, is equal to:

- 25%, for vehicles with CO2 emission values not exceeding 60g/km;
- 30%, for vehicles with CO2 emission values exceeding 60g/km but not 160g/km;
- 40% for the year 2020 for vehicles with CO2 emission values greater than 160g/km but not exceeding 190g/km, and equal to 50% from 2021;
- 50% for the year 2020 for vehicles with CO2 emission values exceeding 190 g/km, and 60% from 2021.

The new rules apply only to newly registered vehicles granted to employees for mixed-use by contracts concluded from July 1, 2020.

No changes are made to the deductibility rules of car expenses, however the companies shall take into consideration the new law provisions in order to determine the withholding taxes on employees' income.

12. Tax on digital services (art. 1, paragraph 678 et seq.)

The Law intervenes on the provisions relating to the tax on digital services, introduced by Budget Law 2019[12] and provides its entry into force starting from January 1, 2020 as well as introducing certain changes for the purposes of its application.

Specifically, it is confirmed the application of a 3% tax on revenues deriving from the supply of certain digital services[13], carried out to users located in Italy by entities carrying out business activities that develop a total volume of revenues wherever realised of no less than EUR 750 million, of which at least EUR 5.5 million derives from digital services realised in Italy.

Furthermore, the Law now establishes that:

- the revenue thresholds aimed at identifying taxable persons are to be determined in relation to the revenue of the previous calendar year;
- the tax is applied on taxable revenues realised in the calendar year in the territory of the State determined on the basis of a percentage, which varies according to the type of digital services, to be applied on the total revenue derived from digital services wherever realised by the company;
- for the identification of the criterion on the basis of which the device of the user, receiving the digital service, is considered to be used in the territory of the State, it is necessary to refer mainly to the internet protocol (IP) address of the device itself or to another geolocation system, in compliance with privacy protection rules.

Specific exclusions listed in the new paragraph 37-bis of Law 145/2018, to which reference should be made, are then introduced.

With regard to operating procedures, the Law also provides that:

- the deadline for the tax payment and the submission of the related annual tax return is set respectively at February, 16 and March, 31 of the calendar year following the one in which the revenues from the supply of digital services are earned;
- for companies belonging to the same group, the fulfilment of the obligations arising from the provisions relating to the tax on digital services may be delegated to a single company which must be designated for this purpose.

Companies are required to set up a special accounting system in order to record information on taxable revenues and register the elements aimed at determining the taxable share in Italy on monthly basis.

Entities without a local permanent establishment and resident in a State outside the EU or outside the European Economic Area with which Italy does not have an agreement for the administrative cooperation to prevent fraud and an agreement for the mutual assistance in the collection of taxes, shall appoint a tax representative for the fulfilment of tax obligations.

The Italian Digital Service Tax will be repealed when the internationally agreed provisions on digital economy taxation become applicable.

12 See Article 1, paragraphs 35 - 50 of Law no. 145/2018.

13 See Article 1, paragraph 37, Law no. 145/2018, according to which the tax applies to revenues derived from the provision of the following services: a) conveyance on a digital interface of advertising aimed at users of the same interface; b) provision of a multilateral digital interface that allows users to be in contact and interact with each other, also in order to facilitate the direct supply of goods or services; c) transmission of data collected from users and generated by the use of a digital interface.

13. VAT (art. 1, paragraph 3)

The Law confirms the so-called safeguard clause, already provided for in the 2015 Stability Law and reproduced in subsequent Budget Laws, regarding the sterilisation of the increase of ordinary and reduced VAT rates, which therefore remain unchanged for 2020.

The views and opinions expressed in CMS Adonnino Ascoli & Cavasola Scamoni's Newsletter are meant to stimulate thought and discussion. They relate to circumstances prevailing at the date of its original publication and may not have been updated to reflect subsequent developments. CMS Adonnino Ascoli & Cavasola Scamoni's Newsletter does not intend to constitute legal or professional advice.

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