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2021 Budget Law Main Tax Topics

(Law 30 December 2020, n.178)

Contents

This Newsletter is aimed at providing a summary of the main tax aspects of interest to companies addressed by Law no. 178 of 30 December 2020 ("Budget Law 2021", hereinafter also the "Law"), published in the Official Gazette no. 322 of 30 December 2020, and entered into force, unless otherwise provided in relation to specific provisions, on 1 January 2021.
The title of the paragraphs includes the reference to the respective sections of the Law (in particular, Article 1 of the Law consists of 1150 paragraphs).

1. Suspension of payments for the amateur sports sector (Article 1 paragraphs 36 and 37)

To support the amateur sports sector, the Law provides a suspension of certain fulfilments and payments due by national sports federations, sports promotion bodies, and professional and amateur sports associations and organisations that have their tax domicile, registered office, or operational headquarters in the Italian territory and operating in ongoing sporting competitions pursuant to DPCM of 24 October 2020. Precisely, the terms relating to the following fulfilments or payments are suspended:

a) withholding taxes on employment income and similar pursuant to articles 23 and 24 of Presidential Decree no. 600/1973 due in the period from 1 January 2021 to 28 February 2021;
b) social security and welfare contributions and premiums for compulsory insurance due in the period from 1 January 2021 to 28 February 2021;
c) VAT due in January and February 2021;
d) income taxes due in the period from 1 January 2021 to 28 February 2021.

The payments benefitting from the suspension have to be made without the application of penalties and interest by 30 May 2021 or, upon election of the taxpayer, by monthly instalments up to a maximum of twenty-four, with the payment of the first instalment by 30 May 2021. However, payments relating to the months of December 2021 and 2022 have to be made by the 16th day of the same months.

2. VAT on cooked dishes (Article 1, paragraph 40)

The Law, resolving an interpretative debate regarding the application of the reduced VAT rate, adds to the concept of preparation of food, to which the reduced 10% VAT rate applies pursuant to number 80) of Table A, part III, attached to Presidential Decree no. 633/72, the sale of ready-made meals and cooked, roasted, fried or otherwise prepared meals for immediate consumption, home delivery or take-away, treating such sales as supply of food and drinks made inside the premises.

3. Extension of the option to step-up the value of the assets to intangible assets without legal protection (Article 1, paragraph 83)

The option[1] to step-up in the 2020 balance sheet the civil value of the assets up to the fiscal value if higher (provided that these assets already result from the previous balance sheet and the civil and the fiscal value do not coincide), is extended to goodwill and other intangible assets without a legal protection.

It is worth recalling that the option for the step-up is subject to the payment of a 3% substitute tax and is effective taxwise from the year following the one in which is made (e.g. 2021 for entities adopting the calendar year). The amount subject to step-up, net of the substitute tax, has to be allocated to a net equity taxable reserve which can be exempted by paying an additional 10% substitute tax.

4. Extension of the tax credit for investments in Southern Italy for the fiscal year 2022 (Article 1, paragraph 171)

The tax credit[2] for the purchase of machinery, plants and equipment intended to be used in production facilities located in the south of Italy (Sardinia, Sicily, Calabria, Basilicata, Campania, Puglia, Molise and Abruzzo) is extended up to the end of fiscal year 2022.

It is worth reminding that the tax credit rate depends on the company size, as follows:

- 25% (10% for Molise and Abruzzo) for large companies;
- 35% (20% for Molise and Abruzzo) for medium-sized companies;
- 45% (30% for Molise and Abruzzo) for small companies.

5. Extension of the enhanced tax credit for research and development activities in Southern Italy (Article 1, paragraph 185-186)

The Law extends to fiscal years 2021 and 2022 the

1 Initially introduced by Article 110 of the Legislative Decree no. 104/2020 ("August Decree")

2 Initially introduced by Article 1, paragraphs 98 et seq. of Law no. 208/2015

enhanced tax credit[3] for R&D investments[4], including those related to Covid-19 projects, relating to production facilities located in the regions of Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicily.

The tax credit, whose rate depends on the company size[5], to be ascertained at a consolidated level in case the company belongs to a group, has been increased from 20% to:

- 25% for large companies (i.e., those with at least 250 employees and an annual turnover of at least EUR 50 million or a total of assets of at least EUR 43 million);
- 35% for medium-sized companies (i.e., those with at least 50 employees and an annual turnover of at least EUR 10 million);
- 45% for small companies (i.e., those with less than 50 employees and an annual turnover or a total of assets not exceeding EUR 10 million).

This provision applies in the framework of the limits and the conditions set out in Article 25 of Regulation (EU) no. 651/2014 of the Commission which regulates the compatibility of state aids with the internal market in relation to research and development projects.

6. Financial offsetting (Article 1, paragraphs 227 and 228)

The Law introduces an offsetting mechanism between credits and debts of Italian resident taxpayers (excluding the public entities) arising from commercial transactions resulting from electronic invoices. The offsetting will take place through an electronic platform made available and managed by the Italian Tax Administration, providing the same legal effects of the extinction of the obligation pursuant to the Italian Civil code, as long as the parties involved are not undergoing insolvency proceedings, debt restructuring, or recovery plans. An inter-ministerial decree shall define the implementation measures.

7. Extension of the tax credit for consulting fees relating to the listing of SMEs (Article 1, paragraph 230)

The Law extends to 31 December 2021 the deadline until which SMEs, starting a procedure for admission to listing on a regulated market or multilateral trading facility of a Member State of the European Union or the European Economic Area, are eligible to a tax credit[6] equal to 50% of the consultancy expenses incurred for the listing up to a maximum amount of EUR 500 thousand, provided that the listing is admitted.

6 Initially introduced by paragraphs 89 to 92 of Article 1 of Law no. 205/2017

8. Tax incentives for business combinations (Article 1, paragraphs 233 to 243)

The Law introduces a new tax incentive aimed at promoting business combinations realized through mergers, demergers or contributions in kind of ongoing businesses resolved between 1 January and 31 December 2021[7].

In particular, the entity resulting from the merger or the absorbing entity, the beneficiary of the demerger and the transferee of the ongoing business is entitled to convert certain qualified deferred tax assets ("DTA") into a tax credit - even if such DTA do not result from the balance sheet. In particular, the conversion applies to the DTA related to the following components:

- tax losses carried forward ("NOLs") accrued until the end of the fiscal year prior to the one in which the business combination has legal effect (and not yet used);
- excess of notional interest deduction (ACE) accrued until the end of the fiscal year prior to the one in which the business combination has legal effect (and not yet used or converted into a tax credit).

For business combinations realized through the contribution in kind of an going business, the same limits and the same conditions provided for the preservation of tax losses in case of mergers apply[8]. In this respect, the transferee has to prepare the interim financial statements in accordance with Article 2501-quater par. 1 and 2 of the Italian Civil Code.

The convertible amount cannot exceed:

- in case of merger or demerger, the 2% of the sum of the assets of the parties involved in the business combination[9], but excluding the party having the higher assets;
- in case of contribution in kind of an ongoing business, the 2% of the assets contributed.

Certain conditions apply in order to be eligible for the tax incentive. Precisely, the companies involved in the business combination:

- must qualify as operating companies from at least two years, and;
- at the date of execution of the transaction and in the two previous years, they do not belong nor have belonged to the same group, nor they are connected through a participation relationship exceeding 20%, nor are controlled, even indirectly, by the same entity pursuant to Article 2359, first paragraph, n. 1) of the Italian civil code. However,

7 The aim of the new measure is to increase the productivity of Italian companies having a smaller average size compared to foreign competitors.

this condition does not apply if:

- the control has been acquired between 1 January 2021 and 31 December 2021 through a transaction other than a business combination which is eligible for the tax incentive at hand, and;
- within one year from the date of acquisition of such control, the parties execute (i.e. has legal effect) one of the qualified business combinations so far discussed. If said conditions are met, the conversion of the DTAs may apply with respect to NOLs and the excess of ACE accrued until the end of the fiscal year prior to the one ongoing at the date in which the control has been acquired. To this extent, the before-mentioned requirements (two years as operating companies and not belonging to the same group) must refer to the date in which the acquisition of the control takes place;

- must not have already benefitted from this incentive.

In any case, the access to the incentive is excluded to companies for which the risk of financial distress[10] or the risk of insolvency has been already ascertained[11].

The conversion into tax credit takes place at two stages:

- 1/4 at the legally effective date of the business combination;
- 3/4 at the first day of the fiscal year following the one ongoing at the date of legal effect of the business combination.

Regardless of the fact that part of the DTAs is converted into a tax credit the following year, all NOLs and excess of ACE in relation to which the DTAs are converted can no longer be used, starting from the legal effective date of the business combination.

In case the taxpayer elects for the domestic tax consolidation regime or for the tax transparency regime, the conversion of the DTAs has to follow the following order: before are converted the DTAs referring to NOLS and excess of ACE accrued before the election, and, afterwards, those related to NOLs transferred to the consolidating entity and excess of ACE and tax losses attributed to the participating shareholders.

Finally, the conversion into a tax credit is subject to the payment of a fee, deductible on a cash basis principle for both corporate income tax (IRES) and regional tax (IRAP) purposes, equal to 25% of the converted DTAs, to be paid as follows:

- 40% within 30 days from the legal effective date of the business combination;
- 60% within the first 30 days of the fiscal year following the one ongoing at the legal effective date of the business combination.

For tax assessment, penalties and collection purposes of the fee, as well as for litigation purposes, the corporate income tax provisions apply.

The tax credit does not bear interest; it can be offset without limits pursuant to Article 17 of Legislative Decree no. 241/97; it can be transferred pursuant to Article 43-bis and article 43-ter of Presidential Decree no. 602/73, it can be requested for refund, it must be reported in the tax return, it is not included in the taxable basis of IRES and IRAP and it is not relevant for the application of the pro rata referred to in Article 109, paragraph 5 of the TUIR.

9. Extension of the incentive for capital increases with changes (Article 1, paragraphs 263 and 264)

The Law extends the incentive[12] related to capital injections to contributions made until 30 June 2021[13] to the benefit of SMEs (i.e. companies with an amount of revenues accrued in fiscal year 2019 between EUR 5 million and EUR 50 million) that in the period 1 March - 30 April 2020 suffered a reduction of the revenues of at least 33% compared to the same period of the previous year due to the Covid-19 emergency.

In particular, the Law increases the tax credit for the company benefitting of the investment - originally set at 50% of the losses exceeding 10% of the net equity, gross of the losses themselves, in the limit of 30% of the capital increase - up to 50% of such capital increase (if approved in the first half of 2021). Furthermore, with a second amendment, the Law provides that the credit can be used for offsetting purposes after the approval of 2020 financial statements but no later than 30 November 2021[14].

Among the other amendments, it is worth mentioning the following:

10 Pursuant to Article 17 of Italian Legislative Decree no. 180 of 16 November 2015.

11 Pursuant to Article 5 of Royal Decree March 16, 1942, n. 267, or of Article 2, paragraph 1, letter b), of the Code of business crisis and insolvency, pursuant to Legislative Decree no.14 of 12 January 2019.

12 Initially introduced by Article 26 of Legislative Decree no. 34/2020 ("Relaunch" Decree).

13 Instead of 31 December 2020

14 No extension is provided on the contrary to the 20% tax credit granted to the contributing shareholders in accordance to the provisions of paragraphs 4 to 7 of Article 26 of the Relaunch Decree.

- with respect to capital injections made in the first half of 2021, the recapture in case of distribution of the reserves is postponed to the end of fiscal year 2024;
- the incentive is prevented to companies subject or admitted to an insolvency procedure, and to companies for which it has been filed, whether by third parties or by the same company, an application seeking the declaration of insolvency and/or the initiation of a bankruptcy proceeding or other insolvency proceedings;
- companies in financial distress are eligible for the benefit if not in a state of difficulty[15] as of 31 December 2019 and if admitted, after that date, to a composition with creditors based on business continuity on a going concern basis (and provided that certain additional conditions are met, including social security and tax compliance in the repayment plans also by instalments).

The Law also extends, subject to certain conditions, the provisions regulating the subscription by the "Fondo Patrimonio PMI" of bonds and debt securities issued by SMEs companies until 30 June 2021.

10. Additional support measures for companies (Article 1, paragraph 266)

To avoid that the share capital losses arising in the fiscal year ongoing on 31 December 2020 due to the health emergency may force directors to immediately liquidate the company, it is envisaged the suspension, with reference to such fiscal year, of the provisions of law ruling on the reduction of more than one third of the share capital due to losses and reduction of the same below the legal minimum[16]. The natural consequence thereof is the ineffectiveness of the cause of dissolution of the company due to reduction or loss of the share capital envisaged by articles 2545-duodecies for SpA and 2484, paragraph 1, no. 4 of the Italian Civil Code for Srl.

The term within which the loss must be reduced to less than one third, pursuant to Article 2446, paragraph 2, and 2482-bisbis, paragraph 4, of the Italian Civil Code is postponed to the fifth subsequent fiscal year; the shareholders' meeting approving the financial statements for that fiscal year must reduce the share capital in proportion to the ascertained losses.

In the event of a reduction of the share capital below the legal minimum[17], the shareholders' meeting, as an alternative to the immediate reduction of share capital and its simultaneous increase to an amount not lower than the legal minimum, may resolve to postpone these decisions to the closing of the fifth subsequent fiscal year upon approval of the financial statements for that fiscal year. Until that date, therefore, the cause of dissolution due to reduction or loss of the share capital referred to in Articles 2484, paragraph 1, no. 4, and 2545-duodecies of the Civil Code remains ineffective.

On the occurrence of the losses at hand, however, it is mandatory to call the shareholders' meeting in any case and without delay, taking care to prepare the necessary balance sheets and respective reports, as well as to indicate separately in the explanatory notes these losses with specification, in specific tables, of their origin as well as of the movements occurred during the fiscal year.

11. VAT treatment relating to the sale of COVID-19 diagnostic equipment and vaccines (Article 1, paragraphs 452-453)

The Law – consistently with the provisions of the EU VAT Directive[18] which allows each Member State to apply alternatively (i) the VAT exemption or (ii) the application of a reduced VAT rate in relation to the supply of both vaccines against COVID-19 and in vitro diagnostic medical devices used in relation to the coronavirus – extends the period of application of the VAT exemption regime (without prejudice to the right to deduct the input VAT)[19] to fiscal years 2021 and 2022.

In particular, it is envisaged that, until 2022, the supplies of COVID-19 diagnostic equipment which meet certain requirements as well as the provision of services closely linked to those equipment will qualify as exempt from VAT, while the transferor will retain the right to deduct the input VAT pursuant to Article 19 of Presidential Decree 633/1972.

The same VAT exemption treatment with the right of VAT deduction applies, until 31 December 2022, to supplies of authorised coronavirus vaccines and services strictly related to those vaccines.

12. Exemption for fiscal year 2021 of the first IMU (Municipal Property Tax) instalment in the tourism sector (Article 1, paragraphs 599-600)

To provide financial support to operators in the tourism and entertainment sector, the Law provides an exemption from the payment of the first IMU (Municipal Property Tax) instalment for 2021 in relation to the following properties:

- properties used as seaside, lake or river bathhouse and spas;

15 Pursuant to regulation (EU) no. 651/2014, of 17 June 2014, of regulation (EU) no. 702/2014, of 25 June 2014, and of Regulation (EU) no. 1388/2014, of 16 December 2014.

16 In accordance with Articles 2446, paragraphs 2 and 3, and 2447 for the SpA, and 2482-bis, paragraphs 4, 5 and 6, and 2482-ter of the Italian Civil Code for Srl respectively.

17 (As per Article 2447 for SpA and 2482-ter of the Italian Civil Code for Srl.

18 As amended by the recent EU Directive no. 2020/2020.

19 Already introduced by Article 124 of the Law Decree n. 34/2020 ("Relaunch" Decree).

- special properties for productive or tertiary use such as factories, theatres, cinemas, banks and hospitals (cadastral category D/2, including appurtenances), farm buildings, tourist villages, hostels, mountain huts, colonies, boarding houses for short stays, holiday homes, bed & breakfasts, residences and campsites, provided that their owners also manage the activities exercised therein;
- properties that fall under cadastral category D in use by companies that set up exhibition structures for trade fairs or exhibitions;
- properties intended for dance halls, night-clubs and similar premises, provided that the relative owners also manage the activities exercised therein.

This provision applies in compliance with the limits and conditions set out in the European Commission communication C (2020) 1863 final "Temporary framework for state aid measures to support the economy in the current emergency of COVID-19".

13. Extension of the tax credit related to fees for the use of non-residential properties (Article 1, paragraphs 602-603)

The tax credit relating to fees paid for the use of real estate properties, different from residential properties, under a leasing agreement or a going concern leasing agreement[20], is extended until 30 April 2021 for tourist accommodation companies, travel agencies, and tour operators, regardless the application of the condition not to exceed the limit of €5 million of revenues in prior year. It is worth remanding that are eligible to the tax credit taxpayers reporting a decrease of the turnover of at least 50% compared to the same month in the previous fiscal year.

14. Tax credit for advertising investments (Article 1, paragraph 608)

The 50% tax credit regime relating to advertising investments exclusively made on daily newspapers and magazines, also in digital format, is extended to fiscal years 2021-2022 (within the budget made available of EUR 50 million per year). Differently from the law provision formerly applicable until 2020, advertising investments on radio and television broadcasters seem excluded from the incentive as they have not been mentioned by the Law.

The incentive is calculated on the entire value of the advertising investment (and not on an incremental basis with respect t to the same expense made in the previous fiscal year).

20 Initially introduced by Article 28 of Legislative Decree no. 34/2020.

15. Tax credit for digital services (Article 1, paragraph 610)

The tax credit for digital services[21], envisaged for companies that publish newspapers and periodicals employing at least one permanent employee, is extended to fiscal years 2021-2022. The credit is equal to 30% of the actual expenses incurred in the previous fiscal year for the acquisition of server, hosting and evolutionary maintenance services for publications in digital format, and for information technology for connectivity management (within an expenditure budget of EUR 10 million for each of the years 2021 and 2022).

16. Foreign investment funds - UCITS withholdings (Article 1, paragraphs 631 to 633)

To equate the tax treatment applicable to dividends and capital gains received by foreign investment funds to the one currently granted to Italian ones, the Law introduces a tax exemption regime in place of the current 26% withholding tax.

In particular, investment funds established abroad in accordance with Directive 2009/65/EC (so-called UCITS IV Directive) or those whose management company is subject to forms of supervision in the country of establishment in accordance with Directive 2011/61/EU (so-called AIFM Directive), if established in a Member State of the European Union or in a State that belongs to the EEA allowing an adequate exchange of information with Italy, are eligible to the following:

- exemption from the withholding tax pursuant to Article 27, paragraph 3 of Presidential Decree no. 600/73 on dividends received starting from the entry into force of the Law;
- capital gains (and losses) realised through the sale of qualified shareholdings of companies resident in Italy are excluded from tax, similarly to what is already provided for by other provisions for non-qualified shareholdings.

17. Extension and increase of tax credits for Industry 4.0 (Article 1, paragraphs 1051-1064)

a. Tax credit for investments in new tangible and intangible assets (Article 1, paragraphs 1051 to 1062)

The tax credit for investments in new tangible and intangible assets, intended to be used for production facilities located in the Italian territory[22], is extended until fiscal year 2022 and increased with respect to fiscal year

21 Introduced by article 190 of Legislative Decree no. 34/2020 ("Relaunch" Decree).

22 Already introduced by the 2020 Budget Law (Law no. 160/2019, Article paragraph 185 et seq.) which had replaced the so-called super-depreciation and hyper-depreciation incentives.

2021.

Precisely, the increase of the tax credit apply to investments made from 16 November 2020 until 31 December 2021, or by 30 June 2022 provided that by 31 December 2021 the relevant purchase order is accepted by the seller and at least 20% of the purchase price is paid ("Period 2020-2021"). For investments made starting from 1 January 2022 and until 31 December 2022, or by 30 June 2023, provided that the PO is accepted and the 20% purchase price is paid by 31 December 2022 ("2022 Period"), the tax credit returns to the amount originally established by the Budget Law for fiscal year 2020.

Said that, the new tax credit rates are determined as follows:

- on a "ordinary basis" for the 2020-2021 Period[23]:
  - 10% for investments in tangible assets, up to EUR 2 million of eligible costs;
  - 10% for investments in intangible assets (previously excluded by the 2020 Budget Law) up to EUR 1 million of eligible costs;
  - 15% for investments in technological tools and devices to be used for "smart working"[24] solutions.

  For the 2022 Period, the tax rate reverts to 6% for all the categories of assets above-mentioned (up to the same limit of eligible costs);
- with regard to investments relating to tangible assets functional to the technological and digital transformation of companies according to the "Industry 4.0" model[25], for the Period 2020-2021 the tax credit is calculated as follows:
  - 50% up to EUR 2.5 million of investments;
  - 30% on the portion of investments beyond EUR 2.5 million and up to EUR 10 million;
  - 10% on the portion of investments beyond EUR 10 million and up to EUR 20 million.

  For the 2022 Period, the first two rates revert respectively to 40% for investments up to EUR 2.5 million and to 20% for investments from EUR 2.5 to EUR 10 million, remaining however at 10% for investments from EUR 10 to EUR 20 million.
- for investments in qualified intangible assets[26], both in the 2020-2021 Period and in the 2022 Period, the rate is set at 20%, up to EUR 1 million of eligible costs (the old limit being EUR 700,000).

As to eligible taxpayers, the following companies are excluded from the tax credit: (a) companies in a state of voluntary dissolution, bankruptcy, compulsory administrative dissolution, composition with creditors without business continuity or subject to other insolvency proceedings provided for by RD n. 267/1942, by the code of business crisis and insolvency, as per Legislative Decree n. 14/2019, or by other special laws or that are under an ongoing procedure for the declaration of one of these situations; (b) companies failing to comply with the rules on safety at the workplace, and that fail to meet the rules on social security payments, as well as (c) companies subject to disqualification penalties pursuant to Article 9 para. 2 of Legislative Decree. n. 231/2001.

The new version of the tax credit partially overlaps with the "old" version introduced by the 2020 Budget Law in relation to investments made from 1 January 2020 to 31 December 2020 (or by 30 June 2021 at certain conditions). Therefore, a coordination between both law provisions shall be defined.

The tax credit is divided into 3 annual instalments of same amount both for tangible assets (the "old" version provided for 5 instalments) and for intangible assets, and can now be used one year in advance compared to the provisions of the Budget Law 2020: precisely, (i) starting from the year of entry into operation of "ordinary" tangible and intangible assets, and (ii) from the year of interconnection for investments in tangible and intangible assets qualifying for "Industry 4.0 ". In the event that the interconnection occurs in a tax period subsequent to the one of their entry into operation, taxpayers can start benefiting from the tax credit according to the rates set for the "ordinary" assets.

With reference only to the tax credit for "ordinary" tangible and intangible assets, referred to investments in assets made starting from 16 November 2020 and up to 31 December 2021, taxpayers with revenues below EUR 5 million are entitled to offset the credit in a single annual instalment. The law provision does not specify

23 The vehicles referred to in the first paragraph of Article 164 of the Consolidated Income Tax Code (Presidential Decree no. 917/86), including trucks, assets with a depreciation rate of less than 6.5% (real estate and others), and freely transferable assets of companies operating in concession in some sectors, are excluded. For investments made through financial leasing contracts, the eligible cost taken into consideration is the one incurred by the lessor for the purchase of the assets.

24 These assets are those used by the companies to implement the agile work pursuant to article 18 of Law 81/2017.

25 Eligible tangible assets are listed in Annex A to Law 232/2016 (2017 Budget Law) relating to tangible assets eligible for hyper-depreciation.

26 Eligible intangible assets are listed in Annex B to the 2017 Budget Law relating to intangible assets eligible for the so-called super depreciation. Article 1, paragraph 1058 of the 2021 Budget Law confirms (as already provided for by the 2020 Budget Law) that the costs for services relating to the use of assets referred to in the aforementioned Annex B through cloud computing solutions are also eligible, for the portion attributable on an accrual basis.

whether this right also applies to investments made by 30 June 2022 but ordered by 31 December 2021 and paid for at least 20% of the purchase price.

The use of the tax credit must necessarily take place through the F24 form; in this regard, neither the Eur 250,000 limit envisaged for credits shown in the RU section of the income tax return, nor the Eur 700,000 limit generally envisaged for "horizontal" offsetting (EUR 1 million for 2020) apply. The application of the additional restriction provided in case of tax liabilities for which the relevant payment term has expired is also excluded.

As in the previous version, the tax credit is not taxed for IRES and IRAP purposes, nor is included in the computation of the pro-rata deductibility of interest expense and general expenses. Furthermore, the new version of the law provision does not contain the explicit prohibition to transfer the credit, which therefore seems now transferrable, also within the tax consolidation regime. Moreover, the tax credit can be combined with other incentives concerning the same costs, provided that such combination, also considering the exclusion from the IRES and IRAP taxable base, does not lead to an incentive exceeding the eligible cost.

Furthermore, in relation to investments in tangible and intangible assets qualifying for "Industry 4.0", a sworn appraisal must be drawn up, issued by an engineer or an industrial expert or a certificate of conformity issued by an accredited certification body certifying that the asset is eligible for the incentive, and that it has been successfully interconnected to the company infrastructure. For assets with a cost not exceeding EUR 300,000, the appraisal can be replaced by a statement made by the legal representative.

Finally, the special recapture regime is confirmed in the event that the asset is sold or relocated abroad within the second fiscal year following the entry into operation or interconnection, and is not replaced by a new asset having the same or superior technological features. In such situation, the portion of the tax credit already used in offsetting related to the transferred/relocated asset must be paid within deadline for the tax balance payment for the tax period in which the transfer/relocation takes place, without however paying penalties and interest.

For assessment purposes, and under penalty of revocation of the benefit, it is mandatory to keep the appropriate documentation to demonstrate that the costs have been actually incurred and the correct determination of such eligible costs. In this respect, invoices and other documents relating to the acquisition of the assets must always refer to the law provisions governing the tax credit. In relation to each eligible tax period, a communication must also be sent to the Ministry of Economic Development: the content, methods and terms of transmission will be identified by a specific directorial decree.

b. Tax credit for research, development and innovation - extension and amendments (Article 1, paragraph 1064)

The tax credit for research, development and innovation already introduced by the 2020 Budget Law[27] for the tax period following the one ongoing at 31 December 2019, is extended, with some amendments, until the fiscal year ongoing at 31 December 2022.

Here below are highlighted the main amendments introduced by the Lawn, while the other provisions remain unchanged.

Specifically, the tax credit rate is increased:

- to 20% (previously 12%), within the limit of EUR 4 million (previously EUR 3 million), for expenses incurred in research and development activities;
- to 10% (previously 6%), within the limit of EUR 2 million (previously EUR 1.5 million), for expenses incurred in technological innovation activities;
- to 10% (previously 6%), within the limit of EUR 2 million (previously EUR 1.5 million), for expenses incurred in design and artistic creation activities;
- to 15% (previously 10%), within the limit of EUR 2 million (previously EUR 1.5 million) for expenses incurred in technological innovation activities aimed at creating new or substantially improved products and production processes to achieve the ecological transition or digital innovation 4.0.

The technical report illustrating the purposes, contents and results of eligible activities carried out in each fiscal year, prepared by the competent project manager, and countersigned by the legal representative, must now be "sworn" (this requirement was not provided in the previous version). It is still required the certification issued by the statutory auditor person/board, certifying that the costs have been actually incurred, are eligible and correspondence to those registered in the accounting books.

c. Tax credit for training 4.0 - extension and amendments (Article 1, paragraph 1064)

The tax credit for "training 4.0"[28] is extended, with some amendments, until the fiscal year 2022.

The tax credit is eligible to all companies, regardless of their legal form, economic industry, or the account-

27 Law n.160/2019, Article1, paragraph 198 et seq.

28 Introduced by Article 1 paragraph n. 46 - 55 of Law no. 205/2017 (Budget Law 2018), subsequently amended by Article 1 paragraph n. 78 - 81 of Law 145/2018 (Budget Law 2019) and by Article 1. Paragraphs 210 and seq. of Law 160/2019 (Budget Law 2020).

ing regime adopted and consists in the recognition of a tax credit based on the training costs for employees incurred for the acquisition or consolidation of skills in technologies relevant to the technological and digital transformation envisaged by the National Business Plan 4.0.

As a new element, it is now specified that for fiscal year 2020 and until fiscal year 2023, eligible costs are those provided for by Article 31, par. 3 of Reg. (EU) no. 651/2014, namely:

a) personnel expenses related to trainers for the hours of participation in training;
b) operating costs for trainers and training participants directly related to the training project, such as travel costs, accommodation costs, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent in which they are used exclusively for the training project;
c) costs of consultancy services related to the training project;
d) personnel costs relating to participants in the training and indirect general expenses (administrative costs, rent, ancillary costs) for the time during which participants attended the training.

18. Strengthening of the anti-fraud instrument implemented with the use of the false VAT ceiling (Article 1, paragraphs 1079 to 1081)

For the purposes of countering fraud made making use of false letters of intent, specific risk analyses and consequent substantial control activities are introduced by the Revenue Agency (pursuant to Article 51 et seq. of Presidential Decree no. 633/1972) aimed at verifying the lawfulness of the declarations of intent issued and filed by taxpayers qualifying as "regular exporters".

Any "irregular" outcome of such controls will prevent the regular exporter from issuing new declarations of intent through telematic channels. In other words, the negative outcome of the analyses carried out by the Revenue Agency will lead to (i) on the one hand, the "invalidation" of the declaration of intent issued, as false or misrepresenting, and (ii) on the other hand, the automatic rejection by the ES (Exchange System) of the electronic invoice issued, without the application of VAT, by the supplier who has indicated the protocol number (transmission number) of the declaration of intent considered as false or misrepresenting.

We believe worth reminding that in the current regulatory framework, transactions with regular exporters can be carried out in a non-taxable regime (pursuant to Article 8, paragraph 1, letter c) of Presidential Decree no. 633/1972) provided that:

- the regular exporter prepares and submits the declaration of intent electronically to the Revenue Agency, which issues a specific receipt with indication of the receipt protocol;
- the supplier electronically checks and verifies in his tax inbox that the declaration of intent has been sent by the usual exporter, reporting the details of the declaration receipt protocol on the invoice.

The operating procedures for the implementation of this new provision will be regulated in a forthcoming Decree of the Director of the Revenue Agency.

19. Provisions on the so called "Plastic Tax" - postponement and amendments (Article 1, paragraphs 1084 and 1085)

Due to the pandemic emergency , the entry into force of the provisions relating to the so-called "Plastic Tax" is postponed from 1 January 2021 to 1 July 2021.

Some amendments are also introduced to the regulatory framework initially envisaged by Law no. 160 of 27 December 2019, namely:

- taxation on the consumption of plastic products with single use or "MACSI" is better defined, expressly including preforms;
- taxation now also applies to taxpayers - whether residents or not in the national territory - who intend to sell MACSI obtained on their own account at a production plant to customers resident in Italy;
- the quarterly threshold has been increased - from EUR 10 to EUR 25 - below which the exemption from reporting and payment obligations applies;
- the penalty system is completely revised in a less punitive way: (i) in case of failure to pay, an administrative penalty from two to five times the tax evaded applies, with a minimum of EUR 250 (ii) in case of delay to pay, an administrative penalty equal to 25% of the tax due, in any case no lower than EUR 150, applies. An administrative penalty from EUR 250 to EUR 2,500 applies for the late submission of the quarterly return and for any other violation.

Finally, starting from 2021, the Law confirms the option of using entirely recycled PET in the production of PET bottles, previously envisaged on an experimental basis[29] exceeding the limit of 50% in force so far.

Procedures for implementing the provisions on the Plastic Tax are delegated to a Decree to be issued by the Director of the Customs and Monopolies Agency.

29 By Article 51, paragraph 3-sexies, of Legislative Decree 104/2020.

20. Provisions on the tax on the consumption of sweetened beverages - postponement and amendments to sugar tax (Article 1, paragraph 1086)

Based on the same premises indicated in relation to the so-called "Plastic Tax," the entry into force of the provisions relating to the so-called "Sugar Tax" is deferred to 1 January 2022.

Taxation now applies also to taxpayers on whose behalf the drinks are obtained from the manufacturer, or the operator of the conditioning system.

A general reduction of the penalty system is also envisaged, in particular:

- in the event of failure to pay, an administrative penalty from two to five times the tax due applies, in any case no lower than EUR 250;
- in case of delay to pay, an administrative penalty equal to 25% of the tax due, in any case no lowe than EUR 150, applies . An administrative penalty from EUR 250 to EUR 2,500 applies for the late submission of the monthly return and for any other violation.

21. Tax credit for the workplaces adaptation (Article 1, paragraphs 1098-1099)

The law changes the deadlines to use and to transfer the tax credit for the workplaces adaptation set forth in Article 120 of the Law Decree no. 34/2020 ("Relaunch" Decree). In particular, it is provided that (i) the offsetting through the F24 form[30], and (ii) the transfer of the tax credit, originally envisaged for the entire tax period 2021[31], can now take place at the latest by 30 June 2021.

22. Amendments to the regulation of advanced tax agreements referred to in article 31-ter of the Presidential Decree of 29 September 1973, n. 600 (Article 1, paragraph 1101)

The provision directly amends article 31-ter of Presidential Decree no. 600/1973, reformulating paragraphs 2 and 3 with the intention of distinguishing the effective date of the validity of advanced tax agreements depending on whether they arise from other agreements concluded with the competent authorities of foreign States, following friendly procedures provided for by the agreements or international conventions against double taxation.

In particular, if the advanced tax agreements do not arise from another agreement with the competent authorities of foreign states, they are binding between the parties for the fiscal year during which they are stipulated, and for the four subsequent fiscal years. The taxpayer is entitled to retroactively apply the effects of the agreement to the previous years provided that, in relation to them:

a) the terms of assessment pursuant to Article 43 of Presidential Decree no. 600/1973 are not expired;
b) no levies, inspections, verifications or other administrative activities of assessment of which the taxpayer has had formal knowledge have begun.

In this case, the taxpayer is allowed to amend the tax returns already filed without incurring penalties.

If, on the other hand, advanced tax agreements arise from another agreement with the competent authorities of foreign states, they are binding between the parties as agreed with said authorities, starting from fiscal years preceding the agreement signature date, but not earlier than the fiscal year in which the request for the agreement has been submitted. Also in this case, the taxpayer will be entitled to retroactively apply the effects of the agreements to the previous years if, in addition to the conditions under letters a) and b) above, also the following ones are met:

c) the taxpayer has requested the retroactive effect in the advanced tax agreement request;
d) the competent authorities of foreign states agree to extend the agreement to previous years.

It should be noted that in both cases (i.e., mutual agreement arising or not from another foreign agreement), the possibility to extend the effect to other fiscal years is subject to the absence of changes in the factual or legal circumstances relevant for the purposes of the agreements signed and arising thereof.

Finally, if the request for an advanced tax agreement arises from another agreement with the competent authorities of foreign countries, the duty to pay a fee for the amount indicated below is introduced, under penalty of inadmissibility of the request. This fee is halved in the event of a request for renewal of the agreement.

Fee amount	**total turnover of the group to which the applicant taxpayer belongs**
EUR 10,000	less than EUR 100 million
EUR 30,000	between EUR 100 million and EUR 750 million
€ EUR 50,000	more than EUR 750 million

30 Pursuant to Article 17 of Legislative Decree. n. 241/99.

31 Pursuant to Article 122 of the same Relaunch Decree

23. Tax simplifications (Article 1, paragraphs 1102, 1105 and 1107)

The law introduces some tax simplifications. In particular:

- taxpayers that meet the requirements (i.e., turnover, in the previous year, not exceeding Eur 400 thousand - if self-employed or service companies - or Eur 700 thousand - if pursuing other business), who opt for VAT payments on a quarterly basis, now have the right to register the invoices in the relevant ledger by the end of the month following the quarter in which the transactions have been executed, and with reference to the same month;
- it has been extended also for 2021 the prohibition for electronic invoicing for healthcare professionals with reference to invoices whose data must be sent to the health card system ("Sistema Tessera sanitaria");
- for IRAP purposes, regions and the autonomous provinces of Trento and Bolzano must now submit, by 31 March of the year to which the tax refers, to the Ministry of Economy and Finance - Department of finance, the relevant data for the determination of the tax (e.g. the applicable tax rates) for the purpose of publication on the IT site of the Revenue Agency. Failing this fulfillment, interest and penalties will not be applicable to taxpayers for errors committed in the payment of the tax.

24. "Esterometro" communication (Article 1, paragraphs 1103 and 1104)

This regulation amends the existing provisions related to the communication of cross-border transactions (so-called "Esterometro").

In particular, as of 1st January 2022, the transactions carried out with not-established taxpayer must be electronically transmitted to the SDI system, in the format of the "electronic invoice".

It is amended also the statutory deadline for the submission of Esterometro (currently, the communication shall be filed on a quarterly basis). Based on the amended regulation, data related to cross-border transactions shall be communicated with different due dates depending on the flow of the invoices (i.e. output or input), namely:

(i) data relating to "output" cross-border transactions shall be communicated within the ordinary deadline for issuing the output invoices or documents certifying the purchase price (i.e. within 12 days)

(ii) for "input" transactions, the communication shall be filed "by the fifteenth day of the month following the receipt of the document proving the transaction or execution of the transaction".

The regulation in question also modifies the penalties applicable to such communication.

With respect to cross-border transactions carried out as of 2022, omitted or incorrect communications are subject to a penalty of EUR 2 for each invoice, up to a maximum of EUR 400 per month, with the possibility of reducing the penalty by half if the violation is regularised within fifteen days following the statutory deadlines.

25. Stamp duty on electronic invoices issued by a person other than the transferor or provider (Article 1, paragraph 1108)

To avoid uncertainty in the application of the stamp duty in cases where the subject issuing the invoice is different from the transferor or provider, it is established that - in relation to electronic invoices submitted through the Interchange System (IS) - the transferor or lender is considered jointly and severally liable to the stamp duty[32] even where it has exercised the right to delegate the issuance of the invoice to its customer (so-called "self-billing") or to a third party.

26. Provisions regarding the electronic storage and submission of payments (Article 1, paragraphs from 1109 to 1115)

The regulation in question postpones to 1st July 2021 the provision that allows taxpayers (who carry out "retail" activities) to fulfil the obligations of electronic storage and telematic submission of data of daily considerations via the use of credit or debit cards, as well as other forms of electronic payment, provided that the inalterability as well as the security of the data are guaranteed.

Furthermore, starting from 1st January 2021, the penalty regime applicable to this communication is amended.

In particular, taking in consideration that storage of data and the issuance (upon the customer's request) of the commercial document shall occur no later than the completion of the transaction, any inaccuracies and omissions relating to electronic storage and / or telematic submission of considerations implies the application of a penalty equal to 90% of the VAT related to inaccurate/omitted data ("for each operation"). The same penalty also applies (one-off) also in the event of failure or irregular functioning of the tools used for such storage and/or submission operations.

If the violation does not affect the correct payment of the VAT, the applicable penalty will be equal to EUR 100 per operation.

32 Pursuant to Article 22 of Presidential Decree no. 642/1972.

27. Revaluation of land and equity investments not traded on regulated markets (Article 1, paragraphs 1122-1123)

Individuals, partnerships, and non-commercial entities have the right to revaluate agricultural and building land as well as shareholdings not traded on regulated markets, whether qualified or not, owned as of 1 January 2021, by paying a substitute tax equal to 11% in a single instalment by 30 June 2021 (or, at most, in three instalments, the first of which by the same date and the subsequent ones with a 3% annual increase by way of interest charge). A revaluation appraisal must be drawn up and certified within the same term.

Should you require any further information or clarification on any aspect of this newsletter please do not hesitate to contact our offices.

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