

We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

OVERVIEW ABOUT FINANCIAL AND TAX INCENTIVES AVAILABLE TO INVESTORS IN ITALY

Introduction – Together with reforms Italy has introduced numerous financial incentives aimed at increasing the attractiveness of the country as a FDI's destination, encouraging R&D operations, supporting industrial crisis areas, and fostering the growth of new innovative enterprises.

Tax incentives are designed to be automatically available to any type of company, reducing uncertainty and red tape.

Alongside this, several other industrial policy measures are provided to support a diverse range of companies, ranging from fledgling startups to established multinational corporations.

Accelerated depreciation - The acquisition cost of new tangible assets, with the exception of vehicles and other transportation means, purchased between 1 April 2019 and 30 June 2020, provided that both the acceptance of the relevant purchase order by the seller and the actual payment of at least 20% of the purchase price were completed by 31 December 2019, is increased by 30% (article 1 of Law Decree 34/2019).

The regime does not apply to the portion of relevant costs exceeding EUR 2.5 million.

In addition, the acquisition cost of certain high-tech tangible assets purchased before 31 December 2020 in relation to digital and technological transformation processes promoted by the Italian government within its Industry Plan 4.0 is increased for depreciation purposes as follows (article 1 of Act 145/2018):

- by 170% for investments up to EUR 2.5 million;
- by 100% for investments between EUR 2.5 million and EUR 10 million; and
- by 50% for investments between EUR 10 million and EUR 20 million.

However, for assets purchased on or after 1 January 2020, both the acceptance of the relevant purchase order by the seller, and actual payment of at least 20% of the purchase price, had to be completed by 31 December 2019.

For the taxpayers benefiting from this regime, the acquisition cost of certain related intangible assets is also increased by 40% for depreciation purposes.

These regimes are subject to the condition that the assets are used in production facilities located in Italy. Furthermore, where qualifying assets are sold or transferred to production facilities located abroad during the period in which the favorable regime applies, the amount of benefit is fully recaptured (without the application of penalties or interest).

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Regional incentives - Qualifying enterprises investing in certain regions in the south of Italy are entitled to a tax credit in relation to certain new business assets purchased (or acquired through a financial lease) before 31 December 2020 equal to 45% for small enterprises, 35% for medium enterprises and 25% for large enterprises in the regions of Basilicata, Calabria, Campania, Puglia, Sardinia and Sicily, and to 30% for small enterprises, 20% for medium enterprises and 10% for large enterprises in the regions of Abruzzo and Molise (article 1 of Act 208/2015).

Qualifying enterprises include taxpayers deriving business income and investing in new assets instrumental to the relevant business activity (e.g. plant, machinery and equipment) in relation to the creation of a new establishment, the improvement of the productive capacity or other fundamental changes of the production process of an existing establishment.

The tax credit is not available to enterprises operating in the financial or insurance sectors or in the coal, steel, transportation, energy or synthetic fibers industries.

An enhanced regional tax credit applies to qualifying enterprises maintaining their activities in a special economic zone for at least 7 years following that in which a qualifying investment is made.

Companies who are registered at the Chamber of Commerce of Como and have a business presence in Campione d'Italia may benefit from a favorable tax regime.

In particular, the computation of the part of their taxable income derived in Campione d'Italia and earned in Swiss francs is based on the current exchange rate reduced by 30%.

The amount of qualifying taxable income earned in euro is also reduced by 30%, or, in any case, by at least EUR 26,000 (article 188-bis of the Direct Taxes Unified Act).

In addition, the tax due by qualifying entities registered on 20 October 2019 at the Chamber of Commerce of Como is reduced by 50% for 5 tax years starting from 2020 (article 1 of Act 160/2019).

Investment credit - A tax credit is granted to resident enterprises investing in new tangible assets, to be used in plants or factories within the Italian territory, between 1 January 2020 and 31 December 2020, or 30 June 2021, provided that both the acceptance of the relevant purchase order by the seller and the actual payment of at least 20% of the purchase price are completed by 31 December 2020 (article 1 of Act 160/2019).

The tax credit is also granted for qualifying investment in new qualifying intangible assets, while it is not granted for investment in vehicles and other means of transportation, tangible assets that are subject to a depreciation rate lower than 6.5%, certain real estate assets and other specific assets.

The tax credit is equal to:

- for tangible assets listed in Annex A to Act 232/2016;
- 40% of the acquisition cost up to EUR 2.5 million; and
- 20% of the acquisition cost between EUR 2.5 million and EUR 10 million;
- for intangible assets listed in Annex B to Act 232/2016, 15% of the acquisition cost up to EUR 700,000; and
- for other qualifying assets, 6% of the acquisition cost up to EUR 2 million.

Enterprises may also benefit from a tax credit for personnel expenses incurred for certain training activities, related to the Industry Plan 4.0 promoted by the government and agreed through corporate or territorial collective agreements (article 1 Act 145/2018). The tax credit is equal to:

- 50% of qualifying expenses incurred by small enterprises, up to a yearly amount of EUR 300,000;



- 40% of qualifying expenses incurred by medium enterprises, up to a yearly amount of EUR 250,000; and
- 30% of qualifying expenses incurred by large enterprises, up to a yearly amount of EUR 250,000.

The percentage is increased to 60% of qualifying expenses where the personnel involved includes disadvantaged workers.

A tax credit equal to 65% of contributions made to maintain, protect and restore public heritage assets, to support cultural institutions and qualifying persons operating in the entertainment sector, including national theatres, concert or orchestra institutions and festivals, and to renovate and expand related structures is also granted, up to 0.5% of the annual revenues of the company (article 1 of Law Decree 83/2014). The tax credit must be equally spread over 3 years.

In addition, the following tax credits for qualifying contributions are also available:

- a tax credit equal to 65% of contributions (up to a maximum of 1% of the annual revenues) made to build, maintain and develop public sport facilities (article 1 of L 145/2018); and
- a tax credit equal to 65% of contributions (up to a maximum of 1% of the annual revenues) aimed at the environmental remediation of public facilities and land (article 1 of Act 145/2018).

Furthermore, small and medium-sized enterprises may benefit from a tax credit, up to EUR 500,000, equal to 50% of advisory expenses incurred up until 31 December 2020 in order to become listed on a regulated market or a multilateral trading facility established in an EU Member State or in an EEA country.

Other tax credits are provided for specific types of activities (e.g. farming, selling newspapers, operating a bookshop or the production or distribution of movies).

Research and development credit - For tax year 2020, a tax credit is granted to resident enterprises investing in qualifying R&D activities, ecological industrial transition, technological innovation and other innovative activities (article 1 of Act 160/2019). In particular:

- for qualifying R&D activities, which include fundamental research, industrial research and experimental development, the tax credit is equal to 12% of eligible expenses, up to EUR 3 million per year and net of any subsidies or contributions received;
- for qualifying technological innovation activities, which include activities aimed at creating new or substantially improved products or production processes, the tax credit is equal to 6% (10% for ecological industrial transition and digital innovation activities) of eligible expenses, up to EUR 1.5 million per year and net of any subsidies or contributions received; and
- for other qualifying innovative activities, the tax credit is equal to 6% of eligible expenses, up to EUR 1.5 million per year and net of any subsidies or contributions received.

Tonnage tax - Italy has introduced a tonnage tax regime (articles 155-161 of the Direct Taxes Unified Act).

Eligible taxpayers must opt for the tonnage tax regime within 3 months from the beginning of the first tax year; the option is irrevocable for 10 financial years and may be renewed.

Under this regime, taxable income is determined by applying daily coefficients with reference to the tonnage and age of the relevant ship. Capital gains and losses on the ships for which the tonnage tax is applicable are included in the income so determined.

However, if the sale concerns a ship which was already owned by the taxpayer in the tax year before the first application of the tonnage tax regime, an amount equal to the difference between



the consideration received and the historic cost, net of depreciation taken, is added to taxable income.

Innovative start-up companies - A company incorporated under Italian law or a company resident in an EEA country and operating in Italy through a branch may qualify as an innovative start-up company if (article 25 of Law Decree 179/2012):

- its main place of business is in Italy;
- it has been established for no more than 60 months;
- it is not a result of a merger, acquisition or corporate sale;
- starting from its second year of activity, the yearly value of production (turnover) does not exceed EUR 5 million;
- it does not distribute profits; and
- its sole or main objective is the development, production and commerce of innovative high-technology products or services.

In addition, the company must satisfy at least one of the following requirements:

- R&D expenditures amount to at least 15% of the higher of the total revenue or the total costs;
- at least one third of its employees is composed by highly qualified individuals; or
- the company is the holder or licensee of a patent right connected with its activity.

An innovative start-up company is exempted from the payment of stamp duties and fees related to its registration, and the annual Chamber of Commerce fee. Furthermore, an innovative start-up company may issue non-voting shares to the public, even if constituted as a limited company, and institute stock-option and work-for-equity schemes.

Patent box regime - Resident and qualifying non-resident persons deriving business income in Italy may opt for a patent box regime if carrying on R&D activities, either directly or through research contracts signed with non-related companies,

universities, research institutions or equivalent entities (article 1 of Act 190/2014).

Under the patent box regime, 50% of income that is derived from the exploitation or the direct use of a software protected by copyright, patents, designs, models, processes, formulas and information deriving from industrial, commercial or scientific know-how which is legally protected is not included in taxable income for IRES, or IRAP. This includes, among others, third party/intercompany royalties, business activities and disposals. The election applies for a period of 5 years and it is deemed to be renewed at the end of each period, unless expressly revoked.

The amount of qualifying income is calculated according to the ratio between the qualifying R&D expenditures to develop the IP and the total cost for the production of the IP.

R&D costs may be increased up to 30% by including the costs related to the acquisition of the IP or to research contracts signed with related companies.

Until tax year 2019, taxpayers opting for the patent box regime and directly exploiting the qualifying IP had to file a tax ruling request for the determination of relevant qualifying income.

However, following the amendments introduced by article 4 of Law Decree 34/2019, they may now opt to directly calculate the amount of qualifying income, stating all necessary information for such determination in appropriate supporting documentation.

The option must be stated in the tax return relating to the tax year in which the patent box regime applies, and it is irrevocable and renewable. The overall downward adjustment resulting from the application of the patent box regime must then be spread in 3 equal amounts over the tax year in which the election is exercised and the following 2 tax years.

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