



## Highlights

- Reduction of corporate income tax rate
- Review of statute of limitation rules
- Abolition of “black list cost” rules
- Country-by-Country Reporting rules
- New incentives introduced
- New penalty system entering into force as from 2016

*The Finance Act for 2016, introducing relevant changes to Italian tax legislation, was finally approved by Parliament and published in the Official Gazette (Law 28 December 2015, No. 208). A summary of the main changes is shown below.*

### **1. Reduction of corporate income tax rate as from 2017**

As from tax periods starting on or after 1 January 2017 the corporate income tax rate will be reduced from 27.5% to 24%. Correspondingly:

- the withholding tax rate for dividends paid by Italian companies to EU or EEA corporate shareholders will be reduced from 1.375% to 1.2% for dividends paid starting from the same tax period;
- a ministerial decree will proportionally re-determine the taxable portion of dividends and capital gains on substantial shareholdings realized by private taxpayers and by individual enterprises (currently 49.72% for profits accrued on or after 2008). The limited taxable portion of the dividend or gain is calculated so as to reflect the underlying corporate tax borne by the company which distributes the dividend or whose shares are disposed.

For credit institutions, asset management companies, parents of banking groups and certain other financial intermediaries, the corporate income tax rate reduction will be compensated by a 3.5% surtax, so that the effective tax rate for such entities will remain 27.5%. On the other hand, such financial taxpayers will enjoy full deductibility of interest expenses for both corporate income tax and regional tax (the current deduction is capped to 96%).

### **2. Amendment of statute of limitations as from 2016**

Law No. 208/2015 abrogates, for the tax period current as at 31 December 2016 and the following tax periods, the current rules that provide the doubling of statute of limitations in case of tax violations for which a communication to the public prosecutor has been made (for details on recent changes regarding this rule, applicable until the tax period in course as at 31 December 2015, see [Tax Alert No. 4/2015](#)). On the other side, again for the tax period in course as at 31 December 2016 and the following tax periods, the ordinary statute of limitations (i.e. for all types of violations) is lengthened as follows::

- violations for incorrect tax returns can be assessed within 31 December of the fifth year following the one in which the tax return was filed (under current rules it is the fourth year);
- violations for the failure to file a tax return can be assessed within 31 December of the seventh year following the one in which the tax return should have been filed (under current rules it is the fifth year).

For the sake of clarity, it is worth mentioning that the above mentioned changes do not affect the statute of limitations provided for the cases where a voluntary disclosure application has been filed.

### **3. Abolition of “black list cost” non-deduction rule**

As from tax periods starting on or after 1 January 2016 the rules limiting deduction of costs incurred vis-à-vis black list entities will be abolished.

### **4. Introduction of Country-by-Country Reporting**

Country-by-Country Reporting (“CBCR”) rules will be introduced in accordance with Action 13 of the OECD BEPS project. Under such rules any group parent company resident in Italy, with previous tax year’s consolidated revenues of at least € 750 million, will be required to deliver a comprehensive report to the Revenue Agency reflecting the activity and taxes paid in each country where the group operates (i.e. revenues, profits before tax, corporate income tax paid, etc.). The information will also be required for Italian subsidiaries provided that (i) a similar CBCR obligation does not exist in the foreign jurisdiction of residence of the parent company, or (ii) there is no exchange of information agreement applicable with the foreign jurisdiction of residence of the parent company with respect to the above-mentioned information. The failure to file the CBCR documentation will be punished with a penalty ranging from 10.000 Euro to 50.000 Euro. Further details will be established in a forthcoming implementing decree.

### **5. Enhanced depreciation and amortisation rules**

An incentive has been introduced to enhance deductible depreciation of the acquisition cost of new business assets (excluding real estate assets and certain specific large assets) purchased between 15 October 2015 and 31 December 2016. Under such regime, the depreciable basis for corporate income tax purposes will be 140% of the acquisition cost. Additionally, the amortization period for trademarks and goodwill that have been stepped up in case of certain corporate reorganizations (post-acquisition mergers, contributions, etc.) will be shortened from 10 years to 5 years. Such change will be effective for reorganizations made in the tax period starting on or after 1 January 2016 or in subsequent tax periods.

### **6. Reduced taxation for the assignment/sale of real estate to shareholders**

Within 30 September 2016 companies and commercial partnerships may opt for a reduced taxation of latent capital gains in case of (a) assignment or sale to their shareholders of real estate assets (other than assets instrumental to the business) or registered moveable assets or (b) transformation (if such companies or partnerships have as their sole or main activity the management of the above assets) into non-commercial partnerships. Under such regime, the difference between the market value of the assets (for real estate, cadastral values) and their tax basis is subject to a substitute tax at the rate of 8% (or 10.5% if the company qualified as a dummy company in two out of three of the previous tax periods). Any tax-deferred reserves are subject to a substitute tax of 13%. In case of assignment, the amount subjected to tax is not taxed in the hands of the shareholders. For the above mentioned types of transactions, registration tax will be halved and cadastral and mortgage tax will apply in the fixed amount of € 200 each.

## 7. Entry into force of the new penalty system as from 2016

Law No. 208/2015 anticipates by one year (i.e. as from 1 January 2016) the entry into force of the reform of administrative tax penalties which was originally due one year later (for a comprehensive summary of such new rules, see [Tax Alert No. 5/2015](#)). The new penalty regime, when more favorable than the old one (e.g. the reduction of the standard penalty for incorrect tax return from 100% to 90%), will be applicable retrospectively for all open tax assessments, pursuant to the “favor rei” principle.

## 8. Further measures

Law No. 208/2015 contains several other changes. Among others:

- the tax on the ownership of leisure yachts has been abolished;
- an extension has been provided to the possibility to opt for the step-up in basis, within 30 June 2016, of shareholdings or land held by non-business taxpayers as at 1 January 2016 (with a flat rate of 8% of the value) and of business assets or shareholdings held by business taxpayers in the accounts closed for the tax period in course as at 31 December 2014 (with a flat rate of 16% for depreciable assets and 12% for non-depreciable assets, with an effective step up starting from the following third tax period);
- as of the tax period following the one current on 31 December 2015, foreign entities will be qualified as “low taxed” for the purposes of application of CFC rules and “tax haven” dividend taxation if the “nominal” tax rate (whereas the current law does not specify that reference has to be made to “nominal” tax rate) applied in the State or territory where they are resident is lower than 50% of the Italian nominal tax rate (excluding entities resident in the EU or EEA States with an effective exchange of information).

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