



## Conversion into Law of Law Decree No. 87/2018: relevant tax measures

On 7 August 2018, Law Decree No. 87, enacted by the Government on 9 July 2018, was converted into law by the Italian Parliament. The Law Decree, as converted by the Parliament (hereinafter "**Converted Law Decree**"), contains, *inter alia*, tax provisions entailing the claw-back of tax advantages in cases where enterprises relocate their business activities, limitations to the "hyper-amortization" regime as well as changes to the R&D tax credit regime in the case of intangibles purchased from other group companies. The Converted Law Decree entered into force on 14 July 2018. This alert is based on the unofficial text made available on the website of the Italian Senate, as the Law converting the Law Decree will be published in the Official Gazette in the next few days.

### 1. Claw-back of tax advantages in cases of relocation of business activities

The Converted Law Decree contains two claw-back mechanisms with respect to tax benefits, constituting compatible aid measures, granted by Italy to resident and non-resident enterprises.

The claw-back of the tax benefits applies in cases of "relocations", i.e. where the beneficiary enterprises (or other enterprises that are part of the same group) transfer whole or part of the business activities that benefitted from the compatible aid measures. The claw-back is limited to relocations taking place within 5 years from the conclusion of the activities or projects benefitting from the aid.

The claw-back applies in two distinct cases:

- a. *Relocations of business activities from Italy to third countries (i.e. non-EU and non-EEA Member States):* This claw-back mechanism, which is subject to compatibility with international treaties, is aimed at recapturing aid linked to specific business investments.
- b. *Relocations of business activities between different locations within the Italian territory, or from Italy to EU/EEA Member States:* This claw-back mechanism, which is subject to compatibility with EU law, is aimed at recapturing aid measures linked to location-specific investments. It applies whenever the relevant business activities are

moved away from the site where the investment had to be made in order to benefit from the aid.

The claw-back concerns the amount of the benefit granted with interest. In addition, the first claw-back mechanism (applicable in the case of relocations from Italy to non-EU/EEA Member States) also triggers the application of penalties ranging from 200% to 400% of the amount of the recaptured aid.

The claw-back mechanisms introduced by the Converted Law Decree only apply to aid measures granted or approved as from 14 July 2018. Former aid measures remain subject to prior claw-back mechanisms.

## **2. New limitations on the “hyper-amortization” regime**

The Converted Law Decree restricts the benefits provided under the “hyper-amortization” regime to tangible fixed assets employed in business activities carried out in Italy. Moreover, it introduces a claw-back mechanism for “hyper-amortization” in cases where the assets, during the period of application of the tax incentive regime, are either sold or transferred to foreign places of business (also within the same enterprise). The “hyper-amortization” regime provides that it is possible to compute enhanced tax depreciation (for an amount equal to 150% of the purchase price), in addition to ordinary depreciation, with regard to certain highly technological tangible fixed assets.

The claw-back mechanism concerns all enhanced tax depreciations relating to a specific asset, which have been deducted in the tax periods preceding the sale or transfer abroad of that asset. The taxpayer must record the claw-back in the tax return filed for the year in which the sale or transfer of the asset takes place. Neither interest, nor penalty charges, are due. The claw-back mechanism does not apply where the sale, or transfer abroad, is made in connection to a replacement of the relevant tangible fixed assets, provided that certain conditions are met (e.g. the new asset must have the same or similar technological features as the asset being replaced). The claw-back mechanism also does not apply in respect of assets that have been bought in order to be employed in multiple business locations and that, as a consequence, may be temporarily used outside the Italian territory (e.g. in construction or installation projects carried out abroad).

The new rules apply only to investments made after 14 July 2018.

## **3. Changes to the R&D tax credit rules**

The Converted Law Decree amends the R&D tax credit regime provided for by article 3(1) of Law Decree No. 145/2013. Under this regime, taxpayers may benefit from a tax credit equal to 50% of the incremental eligible R&D expenditures.

The Law Decree narrows down the scope of the eligible R&D expenditures and, in particular, excludes from the calculation of the benefit the acquisition or licensing costs of certain intangibles (i.e. technical and industrial property rights relevant to an industrial or biotechnological invention, product’s topography, semiconductor or new plant variety) to the extent that these costs derive from intra-group transactions.

This amendment applies retroactively, with effect on the calculation of the R&D tax credit for the tax period in course on 14 July 2018 (i.e. as from 1 January 2018 where the tax period is the calendar year).

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