CBA

2021 BUDGET LAW

Remarks on selected provisions

The Italian Parliament has recently approved Law No. 178 of 30 December 2020 ("2021 Budget Law") which includes a number of provisions to foster the competitiveness of businesses and facilitate investments.

The key tax provisions of interest to businesses are summarised below:

1. *Tax exemption for Italian-sourced income of foreign investment funds* (art. 1, paragraph 631): as from 1 January 2021, EU/EEA funds cease to be subject to discrimination compared to Italian funds as regards taxation of their Italian-sourced income.

   More specifically, the tax exemption scheme applies with regard to dividends paid and capital gains realised on Italian substantial shareholdings by the following entities:

   (i) foreign UCITs established in accordance with Directive 2009/65/EC ("UCITS IV") and
   (ii) foreign UCITs established in an EU/EEA Member State ensuring an adequate exchange of information, that do not comply with Directive 2009/65/EC but whose manager is subject to regulatory supervision pursuant to Directive 2011/61/EU ("AIFMD") in the foreign country of incorporation.

   This measure aligns the tax treatment of said UCITs with the treatment of domestic UCITs, which are already exempt from taxation on the aforesaid income.

2. *Tax incentives for business aaggregations* (art. 1, paragraphs 233 to 243): upon mergers, demergers and business going concern contributions resolved upon in 2021, a merged entity, a recipient entity or a transferee is entitled to opt for conversion into tax credit of the deferred tax assets ("DTAs"), even not recognised, related to tax losses and excess notional interest deduction ("NID", also known as "ACE").

   The companies involved in the aggregation shall have been operating for at least two years and shall not be part of the same group, nor, in any case, be linked by a shareholding relationship exceeding 20%, or controlled, directly or indirectly, by the same entity. Also, companies declared failing, likely to fail or insolvent are not eligible.

   Nonetheless, an exception to such limitations applies to companies subject to control acquired in 2021 by means of transactions other than those indicated

above (i.e., purchase of shareholdings). In such case, the aggregation by means of merger, demerger and business going concern contribution shall be concluded within one year from the acquisition of control (i.e., in 2022).

The maximum amount of DTAs eligible for conversion into tax credit is equal to 2% of the assets of the entities participating in the merger or demerger (without considering the entity with higher asset values), or of the contributed assets.

Eligible DTAs are converted into tax credit for one-fourth in the financial year in which the aggregation takes effect as a matter of law, and for the remaining three-fourths in the following financial year.

The tax credit can be used for offsetting via the F24 payment form, transferred or claimed for refund.

Conversion is subject to payment of a fee equal to 25% of the overall amount of the converted deferred tax assets, to be made in two instalments. The fee is deductible for the purposes of IRES (Corporate income tax) and IRAP (Regional tax on productive activities).

3. *Measure for strengthening the equity of small and medium-sized enterprises* (art. 1, paragraphs 263 and 264): SMEs (not distressed as of 31 December 2019) with revenues between EUR 5 and 50 million in 2019, which do not operate in the banking, financial and insurance sectors and which reported a drop by at least 33% in revenues due to COVID-19 in March and April 2020, compared with the same months in 2019, are eligible for a tax credit in the event of a capital increase, resolved upon and carried out in the first six months of 2021 (i.e., until 30 June 2021).

   The credit amounts to 50% of losses exceeding 10 per cent of Net Equity, before losses, up to 50 per cent of the capital increase and, nevertheless, up to a maximum amount of EUR 800,000.

   The credit should be awarded upon capital increases, i.e., realised by means of transactions against consideration, regardless of any payments in cash. According to this interpretation, it appears that both capital increases resulting from contributions in kind of assets or businesses, and capital increases realised upon waiver of a credit towards the company or resulting from mergers, may be deemed to be eligible.

   Distribution of any reserves before 1 January 2025 should disqualify from payment and entail an obligation to repay the amount, together with statutory interests.

   The tax credit can be only be used for offsetting within 31 November 2021, via the F24 payment form.

4. *Company recapitalisation to cover losses due to COVID-19* (article 1, paragraph 266): as far as losses arisen during the financial year running as of 31 December 2020 are concerned, shareholders of joint stock companies may postpone, up to the

meeting resolving upon the Financial Statements of the fifth following financial year, both the reduction referred to under article 2446 (i.e., reduction of share capital by more than one third due to losses), and the re-establishment of the capital eroded by losses referred to under article 2447 (i.e., reduction of share capital below legal threshold). Likewise, the dissolution clause provided for by article 2484, n. 4, of the Italian Civil Code, on capital reduction below legal threshold shall be suspended until such meeting.

For such purposes, Directors are required to detail losses in the Explanatory Notes to the Financial Statements and to specify, in appropriate schedules, the origin of losses and the payments in cash occurred during the financial year.

The modifications at hand shield Directors from the risks of facing increased responsibility (*responsabilità aggravata*) as referred to in article 2486 of the Italian Civil Code (as amended by Legislative Decree No. 14/2019).

5. *Step-up in the tax value of unprotected intangibles* (art. 1, paragraph 83): the value of goodwill and other unprotected intangibles resulting from the company's accounting at the date of 31 December 2019 may be stepped up to the higher book value.

   Step-up (rectius: *riallineamento*) implies that the book value is not increased; indeed, the lower value of the fixed asset recorded for tax purposes is stepped up to the book value.

   Step-up may be carried out both by OIC-adopter companies and IAS-adopter companies, via the payment of a 3% substitute tax (in up to three equal instalments) on the difference between the statutory income and the taxable income recorded in the 2020 Financial Statements. Such transaction should have tax effect already from 2021 for depreciation, and from 2024 for transfers of assets.

   The stepped-up amount, net of withholding tax, is allocated to an untaxed reserve, which may be freely used via payment of a 10% substitute tax.

6. *Tax credit for investments in new capital assets* (art. 1, paragraphs 1051 to 1062): companies investing in new capital assets for production facilities located on the State territory from 16 November 2020 to 31 December 2022 (or within 30 June 2023 if certain conditions are met) are eligible for a tax credit, whose extent is established according to the type of eligible assets (i.e., "Industry 4.0 tangible assets"; "Industry 4.0 intangible assets", and "ordinary tangible and intangible assets").

   By way of example, the tax incentive can be provided as follows:

   (i) on investments in "Industry 4.0 tangible assets" referred to in Annex A to Law No. 232/2016 (already subject to hyper depreciation): tax credit up to 50% of investment costs up to a maximum of EUR 2.5 million;

   (ii) on investments in "Industry 4.0 intangible assets" referred to in Annex B to Law No. 232/2016 (already subject to increase related to hyper depreci-

ation): tax credit up to 20% of investment costs, with costs eligible up to a maximum of EUR 1 million;

(iii) on investments in "ordinary tangible and intangible assets" (already subject to super and hyper depreciation): 10% tax credit with costs eligible up to a maximum of EUR 2 million for tangible assets and up to a maximum of EUR 1 million for intangible assets.

Further advantages can be granted on account of the investment thresholds and the financial year in which the investment is made.

Investments in vehicles and means of transport, assets with a tax depreciation rate under 6.5%, as well as premises, and buildings are not eligible for tax credit.

The tax credit can be only used for offsetting via the F24 payment form, in 3 equal yearly instalments. In this respect, the ceiling of EUR 250,000 provided for exposures shown in RU section (*quadro RU*) of the income tax return, and the ceiling of EUR 700,000 provided, as a general rule, for offsetting against credits related to debts of another nature (*compensazione orizzontale)* (increased to EUR 1 million for 2020), do not apply. Also, tax credit is not subject to the prohibition of offsetting credits against assessed debt arrears.

The tax credit can be combined with other incentives related to the same costs (i.e., ACE, credit for R&D activities, Patent Box, Nuova Sabatini), provided that such a combination does not result in exceeding the cost incurred for investment.

7. *Tax credit for R&D and innovation activities* (art. 1, paragraph 1064): the legislation on the award of tax credit on investments in R&D and innovation is extended to 31 December 2022.

Said legislation covers all Italian resident companies, regardless of their legal status, economic sector, size, and the regime applied for income determination.

The tax credit can be awarded[1]:

(i) on research and development activities, at the rate of 20% of the relevant tax base, up to a maximum annual amount of EUR 4 million;

(ii) on technological innovation activities, at the rate of 10% of the relevant tax base, up to a maximum annual amount of EUR 2 million;

(iii) on design and aesthetic ideation activities, at the rate of 10% of the relevant tax base, up to a maximum annual amount of EUR 2 million;

(iv) on technological innovation activities contributing to the creation of new

1 The following types of expenses, related to the aforesaid activities, are eligible for tax credit:
i. personnel costs;
ii. depreciation charges and expenses related to movable tangible assets and software;
iii. expenses for extra-muros research contracts;
iv. depreciation charges connected with the purchase from third parties, also under license of use, of industrial property rights of an industrial or biotechnological invention;
v. expenses for advisory services;
vi. expenses for materials and similar goods.

or considerably enhanced products or production processes, at the rate of 15% of the relevant tax base, up to a maximum annual amount of EUR 2 million.

The tax credit can be only used in compensation via the F24 payment form, in three equal yearly instalments.

An appropriate certificate shall be released by the subjects in charge of carrying out statutory audits, attesting that the eligible expenses have been actually incurred by the company and that they match the company accounting records.

Also, companies receiving tax credit are bound to produce and maintain a sworn technical report describing the aims, contents, and outcomes of the eligible activities carried out in each financial year.

8. *Enhanced tax credit for R&D in Southern Italy* (art. 1, paragraphs 185 to 186): the legislation for the awarding of tax credit on R&D investments in Southern Italy is extended to 31 December 2022.

   This measure allows enhanced tax credit for investments in fundamental research, industrial research, and experimental development in the areas of science and technology (including COVID-19 related projects), relating to production facilities located in the following regions: Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardegna, and Sicilia.

   The tax credit is proportional to the size of the enterprise carrying out the aforesaid activities, as follows:

   (i) small and medium-sized enterprises (i.e., enterprises with less than 50 employees and annual turnover or annual balance-sheet total not exceeding EUR 10 million): equal to 45% of eligible expenses;

   (ii) medium-sized enterprises (i.e., enterprises with at least 50 employees and at least EUR 10 million annual turnover): equal to 35% of eligible expenses;

   (iii) large-sized enterprises (i.e., enterprises with at least 250 employees and at least annual turnover or annual balance-sheet total of at least EUR 43 million): equal to 25% of eligible expenses.

9. *Provision of the "Nuova Sabatini" aid* (art. 1, paragraphs 95 to 96): the aid provided under the so-called "Nuova Sabatini" Law, i.e., the award, by banks or financial intermediaries, of facilitated loans to SMEs investing in new machinery, installations, and equipment, should be granted in a single instalment (rather than in 6 yearly instalments);

   The new mechanism for disbursement applies to all SMEs, regardless of the amount of loans.

10. *Tax incentives on investments in Special Economic Zones* (art. 1, paragraph 173 to 176): companies starting a new business in Special Economic Zones ("SEZs") located

in Southern Italy can benefit from 50% income tax reduction on profits from the activity conducted therein.

This tax reduction is applicable as from the financial year during which the new business is started and for the six following financial years, if the conditions below are met:

(i) companies shall maintain their business in the SEZ area for at least ten years;

(ii) companies shall keep the jobs created within the business started in the SEZ for at least ten years.

Entitlement to this incentive is subject to compliance with the limits and conditions on "de minimis" aids set forth by European provisions.

11. *Tax credit on SMEs listing* (art. 1, paragraph 230): the legislation on the award of tax credit on the costs of advisory services related to the listing of a SME in a regulated market or in multilateral trading systems of an EU/EEA Member State is extended to 31 December 2021.

The tax credit may be awarded up to a maximum of 50% of the overall costs incurred, up to a maximum amount of EUR 500,000.

12. *Tax credit on training for Industry 4.0* (art. 1, paragraph 1064): the legislation on the award of tax credit for workforce training for 4.0 Industry, carried out to obtain and consolidate technological knowledge provided for by the "National Industry 4.0 Plan", is extended to 31 December 2022.

The measure covers all companies, regardless of their legal status, economic sector, and the regime applied for income determination.

The eligible costs are set forth by article 31, para. 3, of Reg. (EU) No. 651/2014, as follows:

(i) trainers' personnel costs, for the hours during which they take part to the training;

(ii) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, accommodation expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used solely for the training project;

(iii) costs of advisory services related to the training project;

(iv) trainees' personnel costs and general indirect costs (administrative costs, rental, overheads) for the hours during which the trainees take part to the training.

The available tax credit is proportional to the size of the enterprise, as follows:

(i) small and medium-sized enterprises (i.e., enterprises with less than 50 employees and annual turnover or annual balance-sheet total not exceeding

EUR 10 million): 50% of eligible expenses, providing for an annual ceiling of EUR 300,000;

(ii) medium-sized enterprises (i.e., enterprises with at least 50 employees and at least EUR 10 million annual turnover): 40%, providing for an annual ceiling of EUR 250,000;

(iii) large-sized enterprises (i.e., enterprises with at least 250 employees and at least annual turnover of EUR 50 million or annual balance-sheet total of at least EUR 43 million): 30%, providing for an annual ceiling of EUR 250,000.

13. *Step-up of shareholdings and land* (art. 1, paragraphs 1122 and 1123): the tax benefit on the step-up of cost or purchase value should be extended. More specifically, natural persons, non-commercial partnerships (*società semplici*), non-commercial entities and non-resident entities without a permanent establishment in Italy may opt to step up the cost or purchase value of their lands and shareholdings in unlisted companies, held other than as part of a business as of 1 January 2021, with partial or full recognition for tax purposes of the capital gains.

Entitlement to the reduced taxation regime is subject to the following:

(i) the land and shareholding in the unlisted company shall be held as of 1 January 2021;

(ii) a specific sworn valuation shall be prepared and submitted by a qualified entity;

(iii) payment of a self-liquidating 11% substitute tax on the appraised value.

The obligations referred to under item (i) and (ii) above shall be fulfilled within 30 June 2021.

The substitute tax applies on the entire value resulting from the land valuation (and therefore not only on the attributed increase in value). The substitute tax applies at a 11% rate, which is valid both for lands and shareholdings (substantial and non-substantial).
For the purposes of the legislation at hand, it is worth recalling that the following shareholdings are eligible for step-up:

(i) shareholdings which are securities (shares);

(ii) interests in the share capital or equity interests which are not securities (shares in SRLs (Limited Liability Companies) or partnerships (*società di persone*));

(iii) rights or securities by means of which said shareholdings can be acquired (e.g., option rights, warrants, bonds convertible into shares).

14. *Incentives to attract highly qualified inbound workers* (art. 1, paragraph 50): the so-called "inbound" workers who have moved their tax residence to Italy before 2020 are also included among the subjects entitled to benefit from the reduced taxation regime for a further 5 financial years (with 50% tax exemption).

Such benefit is in addition to the standard regime applicable to inbound workers, which provides for partial tax exemption on their Italian-sourced income for 5 years, if certain conditions are met. 70% of the eligible income should be exempt from income tax (90% for taxpayers moving their residence to Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sicilia, and Sardegna).

For the purpose of qualifying for the extension of the benefit for a further 5 years, taxpayers should:

(i) have been enrolled with AIRE (the register of Italian citizens living abroad) or, as an alternative, be EU Member State citizens;

(ii) have moved their tax residence in Italy before 2020;

(iii) already benefit from incentives to inbound workers as of 31 December 2019.

The extension is subject to the payment of an amount equal to 10% of the eligible Italian-sourced income from employment and self-employment, related to the tax period preceding the tax period in which the option is exercised (5% if a taxpayer has at least three underage or dependent children).

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