

# Studio Tributario e Societario



## Tax Flash News 2023 Budget Law

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# 2023 Budget Law: Law 29 December 2022, no. 197

## 1. Direct taxes

### 1.1. Accounting mistake correction

*(Art. 1 par. 273 and sub.)*

According to the new article 83 of the Italian Income Consolidated Text (IICT), as recently modified by the Law Decree no. 73/2022, the correction of accounting mistakes is recognized for tax purposes in the same financial statement in which the correction occurs regardless the filing of an integrative tax return for the fiscal year the accounting mistake refers to.

The 2023 Budget Law modifies the article 83 providing that for tax purposes the effectiveness of the accounting mistake correction is allowed only for companies subject to financial statement audit. The new provision applies to the fiscal year running as of the effectiveness of the Law Decree no. 73, dated June 21, 2022.

### 1.2. Real estate depreciation

*(Art. 1 par. 65 and sub.)*

The real estate depreciation rate is increased to 6% for the retail companies operating in specific commercial sectors (basically goods distribution). The provision applies also to the companies renting real estates to retail companies joining the same tax consolidation group. The provision applies for the fiscal year running as of December 31, 2023, and the four subsequent (i.e. 2023-2027).

## 2. International taxation

### 2.1. “Black list” cost deduction

*(Art. 1 par. 84 and sub.)*

For direct tax purposes, the deduction of cost referred to transactions occurred with entities located in states defined as not cooperative for tax purposes is allowed up to the normal value of such transactions (the 2023 Budget Law amends article 110 of IICT). The non-cooperative states are identified by the EU list including at the moment the following states: American Samoa, Anguilla, Bahamas, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, Turks and Caicos Islands, US Virgin Islands e Vanuatu.

The cost exceeding the normal value threshold can be deducted under the condition that the Italian taxpayer proves the effective execution of the transaction and the effective economic interest in it.

The above cost must be separately reported in the annual income tax return, in case of omission a penalty equal to 10% applies (up to 50K€).

### 2.2. Tax recognition of the retained earnings of participations located in “tax heaven”

*(Art. 1 par. 87 and sub.)*

According to the Italian tax law, dividend paid by participations located in tax heaven can be fully taxed at the level of the Italian resident shareholder. The 2023 Budget Law amends articles 47, par. 4, and art. 89, par. 3 of IITC providing a substitutive tax to be applied to the retained earnings of the participated company located in tax heaven, granting the tax exemption of the relevant dividend when distributed.

The substitutive tax is applied to the retained earnings not yet distributed as of January 1, 2023, as resulting from the financial statement referred to the fiscal year preceding that running as of January 1, 2022.

The option for the substitutive tax can be applied only by taxpayers carrying on business activity (attività di impresa) and it is equal to 9% for the taxpayers subject to corporate income tax (IRES) and to 30% for the taxpayers subject to individual income tax (IRPEF).

The substitutive tax has to be paid by the deadline for the payment of the income taxes due for the fiscal year running as of December 31, 2022, and if the dividend payment occurs before the deadline to pay taxes due for the FY 2023 the substitutive tax is reduced by 3 percentage points. The option is exercised in the income tax return referred to the fiscal year running as of December 31, 2022. As per the option above, the fiscal value of the foreign participation is increased by the amount of the retained earnings subjected to the substitute tax and decreased by the dividend distributed.

### **2.3. Capital gain of real estate companies**

*(Art. 1 par. 96 and sub.)*

The 2023 Budget Law amends the article 23 of the IITC providing that the capital gain realized by non-resident individuals or companies through the sale of participations into foreign real estate companies is subject to taxation in Italy if in the 365 days preceding the transfer the value of the foreign participation is for the major part due to the ownership of real estates located in Italy. The provision is not applied to participated listed companies owned by collective investment funds (OICR).

### **2.4. Investment management exemption**

*(Art. 1 par. 255)*

The article 162 of the IITC entitled “permanent establishment” is amended by the provision that non-resident asset management companies that manage investment in Italy on behalf of foreign funds and other investors do not qualify as permanent establishment of such foreign entities under some condition.

## **3. Tax special regime**

### **3.1. Forfeiting tax regime**

*(Art. 1 par.54)*

The limit to opt and maintain the forfeiting tax regime by individuals carrying on business activities is increased from 65K€ to 85€. In case of revenues higher than 100K€, the option is automatically revoked in the fiscal year in which the limit is over-headed.

### **3.2. Flat Tax**

*(Art. 1 par.55 and sub.)*

A 15% flat tax can be applied by individuals carrying on business activities on the part of income exceeding the highest income registered in the three previous fiscal years, reduced by 5%.

## **4. Tax relief**

### **4.1. Land and participation fiscal value step-up**

*(Art. 1 par. 107 and sub.)*

Participation and lands owned by individuals can be stepped up, for the purposes of computing the capital gains pursuant to Article 67 of ITC. The purchase value of share investments and lands held as of January 1, 2023, can be stepped up with the payment of a substitute tax equal to 16%. In order to proceed with the revaluation, a sworn appraisal is required by November 15, 2023.

The 2023 Budget Law, differently from the past, extends the option also to listed shares, in this case the value to be step-up is determined by reference to the negotiation prices average of the month of December 2022.

The substitutive tax has to be paid fully by November 2023, 15, or over three equal installments by November 15, 2023, November 15, 2024, and November 15, 2025, increased by 3% annual interest.

#### **4.2. Tax recognition of collective investment funds (*organismi di investimento collettivo del risparmio - OICR*)**

*(Art. 1 par. 112 and sub.)*

The capital income (ex article 44, par. 1, letter g), IITC) and other incomes (ex article 67, par. 1, letter c-ter), IITC) deriving by the transfer or refund of quotas or shares of collective investment funds (*organismi di investimento collettivo del risparmio – OICR*) are considered realized for tax purposes, at taxpayer's option, by the application of a substitutive tax equal to 14% to be applied to the difference between the value of quotas or shares as of December 31, 2022, and the purchase or subscription price.

The option has to be exercised by June 30, 2023, through a communication to be filed to the financial intermediary where the investment is deposited and the relevant substitute tax is paid by September 16, 2023, by the intermediary, the cash is furnished in advance by the opting taxpayer. In case no deposit relationship occurs, the taxpayer can opt for the above substitutive tax in his own annual tax return due for the 2022 fiscal year and the payment is made within the deadline to pay 2022 income taxes settlement (in the major cases, June 30, 2023).

#### **4.3. Insurance policy tax recognition**

*(Art. 1 par. 114)*

Certain life insurance policies can be tax recognized for capital income tax purposes (article 44, par. 1, letter g-quarter), IITC) by the payment of a 14% substitutive tax applied to the difference between the mathematic reserve as of December 31, 2022, and the premiums paid. The payment is due by September 16, 2023.

#### **4.4. Real estates and registered movables attributed to shareholders – Corporation transformation into simple companies**

*(Art. 1 par. 100 and sub.)*

Real estates and registered movables owned by corporations can be attributed to the relevant shareholders (and taken out from the business activity and related tax regime) by applying an 8% substitutive tax on the capital gain (10,5% in case of shell companies).

The same substitutive tax is applied in case of transformation of corporations into simple companies (plus 11% on equity reserves subject to taxation), under the condition that corporations transformed have as major activity the management of real estates and registered movables.

The 60% of the above substitutive tax has to be paid by September 30, 2023, and the remaining 40% by November 30, 2023.

Registration tax due is reduced to a half and mortgage and cadastral taxes are applied in a fixed amount.

#### **4.5. Real estates attributed to the individual entrepreneur**

*(Art. 1 par. 106)*

Real estates owned within the business activity of an individual entrepreneur can be attributed to him (and taken out from the business activity and related tax regime) by applying an 8% substitutive tax on the capital gain. The payment has to be made by November 30, 2023, and June 30, 2024.

#### **4.6. Business KPIs bonus tax rate reduction**

*(Art. 1 par. 63)*

The substitutive tax applied to bonus recognized to employees for business KPIs is reduced to 5% (from 10%).

#### **4.7. Superbonus**

*(Art. 1 par. 894 and sub.)*

The super bonus relief for costs sustained in 2023 is reduced to 90% only for certain construction or maintenance cost on real estate.

## **5. Tax settlement procedures**

### **5.1. Tax notice (Avvisi bonari) settlement**

*(Art. 1 par. 153 and sub.)*

Tax notice related to annual tax returns referred to fiscal years 2019, 2020 and 2021, whose payment deadline has not yet expired as of January 1, 2023, can be settled by the payment within 30 days of the higher taxes due in one installment or over equal installments plus a reduced 3% penalty.

### **5.2. Special self assessment**

*(Art. 1 par. 174 and sub.)*

According to a special self-assessment procedure provided by the 2023 Budget Law, tax infringements (not yet challenged by the Italian Tax Authorities) referred to the fiscal years until 2021 can be settled by the application of reduced penalties (up to 1/18 of the minimum amount); the payment can be split over 8 installments (from March 31, 2023).

### **5.3. Formal tax infringements settlement**

*(Art. 1 par. 166 and sub.)*

Formal tax infringements (not relevant for tax computation), made before October 31, 2022, can be settled by the payment of a 200 Euro amount for each fiscal year within March 31, 2023, and March 31, 2024.

### **5.4. Tax agreements and tax assessments settlement**

*(Art. 1 par. 179 and sub.)*

According to the tax settlement procedure provided by the 2023 Budget Law, tax assessments and other tax challenges deeds notified by March 31, 2023, or still appealable on January 1, 2023, if already notified, can be settled by the payment of the higher taxes due and the relevant penalties reduced to 1/18 of the minimum. The amounts due can be split over 20 quarterly installments.

### **5.5. Tax settlement infringement**

*(Art. 1 par. 219 and sub.)*

Any infringement made by the taxpayers who have omitted to pay any tax due further to settlement agreements reached with the Italian Tax Authorities on tax assessments of other tax deeds, can be settled by the payment of the omitted amounts by March 31, 2023, also over 20 installments.

### **5.6. Tax litigation settlement**

*(Art. 1 par. 186 and sub.)*

Tax litigation pending as of January 1, 2023, can be settled by paying different amounts based on the status of the litigation.

In particular:

- in case of litigation still pending in first degree, the tax litigation can be settled by the payment of an amount equal to 90% of the litigation value,
- in case during the litigation the tax deed appealed is fully nullified, the tax litigation can be settled by the payment of an amount equal to:
  - a) 40% of the litigation value, if the Tax Agency lost in first degree,
  - b) 15% of the litigation value, in case the Tax Agency lost in both first and second degree;

- in case the tax deed appealed is partially nullified, the tax litigation can be settled by the payment of the above percentages to be applied to the amount of the tax assessment confirmed and the part nullified;
- in case of tax litigation pending in front of the Supreme Court (Corte di Cassazione), if the Tax Agency lost in both first and second degree, the litigation can be settled by the payment of the 5% of the litigation value;
- also the tax litigation regarding only tax penalties can be settle by the payment of an amount equal to 15% or 40% of the litigation value.

The settlement procedure has to be requested by June 30, 2023.

### **5.7. Simplified tax litigation settlement**

*(Art. 1 par. 206 and sub.)*

As alternative to the above, taxpayers can opt for a simplified tax litigation settlement for litigations pending in first or second degree based on article 48 of the Legislative Decree no 546/97. In this case the penalties can be reduced to 1/18 of the minimum and the payment can be split over 20 installments.

### **5.8. Simplified renounce to Supreme Tax Court (Corte di Cassazione) litigation**

*(Art. 1 par. 213 and sub.)*

Taxpayers can renounce to the tax litigations pending as of January 1, 2023, in front of the Italian Supreme Court (Corte di Cassazione ), by the payment of penalties reduced to 1/18 of the minimum.

### **5.9. Tax debts nullified**

*(Art. 1 par. 222 and sub. e 231 ss.)*

Tax debts existing as of January 1, 2023, for an amount lower than 1.000 Euro, attributed to the tax collection agency from January 1, 2000, to December 31, 2015, are automatically cancelled.

Other tax debts attributed to the tax collection agency from January 1, 2000, to June 30,2022 can be partially nullified on taxpayers' request to be filed by April 30, 2023.

## **6. Tax audit and tax collection**

### **6.1. Tax request notice deadline**

*(Art. 1 par. 158)*

The deadline to notify any tax request regarding the fiscal year running as of December 31. 2019, is postponed of one year (from December 31, 2023, to December 31, 2024).

### **6.2. Tax penalties notice deadline**

*(Art. 1 par. 171)*

The deadline to challenge any formal tax infringements made before October 31, 2022, is postponed of two years.

### **6.3. Tax payment request form "avvisi bonari": installments split**

*(Art. 1 par. 159)*

According to the 2023 Budget Law, any tax payment request deriving from "avvisi bonari" can be split over 20 installments regardless the amounts due.

### **6.4. Sport entities, tax payments suspended**

*(Art. 1 par. 160 and sub.)*

Sport entities enjoyed (also thanks to the Covid emergency legislation) of the suspension of many tax and social contribution payments that have to be made starting from December 29, 2022, by different deadlines.

## **7. Crypto-activities**

The 2023 Budget Law has introduced a new tax legislation for crypto-activities and relevant income.

### **7.1. Crypto activities to be taxed for income tax purposes by non-entrepreneur individuals**

*(Art. 1 par. 126 and sub.)*

The 2023 Budget law foresees that capital gain and other income realized by transactions on crypto activities qualify as different incomes (the residual income category other than the typical income such as financial, employees, autonomous work, real estate or business income) if higher than 2K€ per year.

Moreover, it is provided that the capital gains on crypto activities are determined by difference between the sale price and the relevant purchase price (capital loss are computed as well).

The relevant capital gain is subject to a 26% substitute tax.

### **7.2. Crypto activities to be taxed for income tax purposes by entrepreneur (included corporations)**

*(Art. 1 par. 131 and sub.)*

The evaluation at year end of crypto activities is not tax relevant for income tax purposes, even if the relevant evaluation is registered in the financial statement.

### **7.3. Crypto activities fiscal value**

*(Art. 1 par. 133 and sub.)*

For the purposes of computing the capital gains pursuant to article 67 of ITC, the fiscal value of crypto investments held as of January 1, 2023, can be stepped up with the payment of a substitute tax equal to 14%.

### **7.4. Crypto activities infringement**

*(Art. 1 par. 138 and sub.)*

The 2023 Budget Law foresees a procedure to settle any tax or monitoring infringement made with regard to any crypto activity by December 31, 2021.

The settlement procedure foresees in case of omitted disclosure in the annual tax return of crypto activities non generating any income, a penalty equal to 0,5% (to be applied to the value of the non-declared activities); in case of omitted declaration of any income deriving from crypto-activities a substitutive tax of 3,5% and a penalty of 0,5% are to be paid.

### **7.5. Monitoring compliance of crypto activities**

*(Art. 1 par. 129)*

Monitoring compliance provided by the Italian legislation for financial intermediaries are extended to the crypto activities held.

### **7.6. Stamp duty and IVAFE of crypto activities**

*(Art. 1 par. 144 and sub.)*

Since January 1, 2023, stamp duties are applied to crypto activities as well as the IVAFE (2 x 1000).

## **8. VAT**

### **8.1. VAT rate reduced at 5% for gas supplied during the first quarter 2023**



*(art. 1, para. 13)*

Paragraph 13 provides for, in order to limit the impacts of the gas price increase, the application of the reduced VAT rate of 5% for the supply of methane gas used for combustion (for civil and industrial uses) documented on the invoices issued for estimated or effective consumption during the first quarter of 2023.

## **8.2. VAT rate reduced at 5% for heat energy (produced with natural gas under an "energy service" agreement) supplied during the first quarter 2023**

*(art. 1, para. 14)*

Paragraph 14 (provides for the application of the reduced VAT rate of 5% for the supply of heat energy (produced with natural gas in force of an "energy service" agreement) documented for estimated or effective consumption during the first quarter of 2023.

## **8.3. VAT rate reduced at 5% for tele-heating supplied during the first quarter 2023**

*(art. 1, para. 16)*

The paragraph 16 provides for the application of the reduced VAT rate of 5% for the supply of remote-heating documented on the invoices issued for estimated or effective consumption in the first quarter of 2023.

## **8.4. VAT rate reduced at 5% for products for childhood and feminine hygiene**

*(art. 1, para. 72)*

Paragraph 72 introduces (by amending Table A, Part II- bis, annexed to Italian Presidential Decree No. 633/1972) the application of the reduced VAT rate of 5% for:

- all sanitary products and tampons designed to protect female intimate hygiene (independently of their characteristics);
- powdered or liquid milk for babes or young children (for retail sale);
- food mix of flour, groats, meal, starch or malt extract intended for babes or young children (for retail sale) classified with CN code 1901 10 00;
- nappies for babies; baby seats to be assembled in motor vehicles.

In the absence of a specified effective date, the new rule is applicable to supplies carried out from 1 January 2023 (i.e. from the starting date of the Budget Law).

## **8.5. VAT rate reduced at 10% for pellets supplies carried out during FY 2023**

*(art. 1, para. 73)*

Paragraph 73 - as exception of no. 98 of Table A, Part III, annexed to Italian Presidential Decree no. 633/1972 - provides for the application of the reduced VAT rate of 10% to the supply of pellets carried out during fiscal year 2023.

## **8.6. Supplies of goods by digital platforms**

*(art. 1, para. 151)*

Paragraph 151 introduces for VATable subject who facilitate through digital platforms the online sale to end-consumers (B2C) of certain goods identified by a Decree of the Minister for the Economy and Finance located in Italy the obligation to communicate to the Italian Tax Authorities the data of the purchasers and the data of the supplies carried out.

## **8.7. The purchaser liability for non-existent VAT supplies subject to the "reverse charge" mechanism - Penalties**

*(art. 1, para. 152)*

Paragraph 152 amends the Article 6, para. 9-bis 3 of Legislative Decree 471/1997 providing that in case of application of the reverse charge mechanism for transactions listed at paragraph 9-bis of the above-mentioned Article, but “non-existent” carried out with a VAT evasion or fraud intent, the penalty due is the one provided by Article 6, para. 6 of the Legislative Decree 471/1997 equal to 90% of the VAT deducted but that could not have been deducted.

## **9. Other taxes**

### **9.1. Deadlines deferral of the application of “sugar tax” and “plastic tax” rules**

*(art. 1, para. 64)*

Paragraph has postponed to January 1st, 2024, the effective date of sugar tax and plastic tax, introduced with the Budget Law 2020.

### **9.2. Electric energy and Oil & Gas contribution**

*(art. 1, para. 115 and sub)*

An extraordinary contribution for 2023 is provided for the taxpayers whose 2022 turnover comes at least for 75% from the activities of production, sale or import of electric energy, natural gas and oil products.

The contribution is computed by applying a 50% percentage to the Corporate Tax (IRES) taxable income referred to the fiscal year preceding that running as of January 1, 2023, for the part exceeding at least the 10% of the taxable income average of the four fiscal years preceding that running as of January 1, 2022. The contribution cannot exceed a value equal to the 25% of the net equity of the fiscal year preceding that running as of January 1, 2022.

The contribution has to be paid within the sixth month subsequent to the year-end (extended in case of statutory financial statement approval postponement), in case of taxpayers with a fiscal year different from the calendar one, the deadline is June 30, 2023. The contribution cannot be deducted for income tax purposes.

As regards the 2022 extraordinary contribution, the relevant legislation is amended by providing that the contribution is due only by the taxpayers whose 2021 turnover comes at least for 75% from activities of production, sale or import of electric energy, gas and oil products.

### **9.3. Electric energy and gas tax credit**

*(Art. 1, para 2 and sub)*

The tax credit attributed to the Italian corporations for the purchase of electric energy and gas are postponed also for 2023 first trimester with slightly amendment to the original 2022 legislation.

### **9.4. Instrumental assets investments tax credit**

*(Art. 1 para 423)*

The deadline to grant the tax credit for investments into 4.0 instrumental assets is extended to September 30, 2023 (from June 30, 2023).

### **9.5. R&D repayment request**

*(Art. 1 para 271)*

The deadline to file R&D repayment request is extended from October 31, 2023, to November 30, 2023. The payments due in order to repay the R&D tax credit offset in excess are not amended.

### **9.6. Small and medium size companies – Tax credit for listing**

*(Art. 1, para 395)*

The tax credit on listing cost sustained by small and medium size companies is postponed to December 31, 2023, and increased to 500K€, from 200K€.

### **9.7. Center and South Italy tax credits**

*(Art. 1, para 265 and sub)*

To the year 2023 are extended the following tax credits related to activities carried out in the Center or South of Italy:

- instrumental assets investments
- R&D
- Cost related to composting plants.

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