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ICEbreakers: Unlocking Italy

Hot topics

2018 Budget Law: The budget law, which generally applies as from January 1, 2018, includes the following changes to the tax rules:

- **Web-tax:** A new 3% WHT will be applied on payments for "digital services" made by Italian companies to resident and nonresident providers as from January 1, 2019, where the same provider engages in more than 3,000 transactions during a calendar year. The Ministry of Finance will issue guidance that will identify the services subject to the equalization tax and provide implementation rules.
- **PE definition:** The domestic definition of a PE is expanded to bring it in line with the revised definition in the 2017 version of the OECD model tax treaty. Taxpayers will need to review the applicability of the new rules on a case-by-case basis, taking into consideration the tax treaty with the country of residence of the foreign enterprise, and the extent to which the treaty partner has adopted the new PE provisions in the OECD multilateral instrument (MLI). Italy did not opt to include the dependent agent/commissionaire changes to the definition of a PE in the MLI.
- **Interest deductions:** The computation of EBITDA for purposes of determining the 30% threshold is revised to exclude dividends received from nonresident subs.
- **Extra depreciation deductions:** The budget law extends by one year (with some changes) the extra depreciation allowances for certain assets: a) the extra 150% hyper depreciation deduction for new assets acquired for the technological transformation of enterprises under the "Industry 4.0" plan, which results in total tax depreciation of up to 250% of the cost of the asset. The Industry 4.0 plan includes investments in plant, equipment and machinery whose operations are digitally controlled and/or operated by smart sensors and drives that re interconnected with a factory's computer systems; b) the extra depreciation deduction for tangible assets whose depreciation rate for tax purposes exceeds 6.5% (which is reduced from 40% to 30%); c) the extra 40% depreciation deduction for new intangible assets (i.e. software, systems, platforms, etc.) related to the technological transformation under the "Industry 4.0" plan.
- **Substitute tax on capital gains:** The 26% "substitute tax" is extended to dividends and capital gains earned by nonresident entities on qualifying participations (i.e. participations of at least 20% of the voting rights or 25% of the capital or profit rights) in Italian companies. The new provision generally will apply where a capital gain is not exempt under an applicable tax treaty.
- **Step-up of tax basis of participations:** Nonresident entities can elect to step up the tax basis of participations in unlisted Italian companies held as of January 1, 2018 to up to their fair market value, through the payment of an 8% substitute tax. The substitute tax is calculated on the fair market value of the participation as of January 1, 2018, which must be certified by a sworn appraisal by June 30, 2018. This provision may be of interest to foreign entities that potentially could realize a taxable capital gain on the disposal of such participations (e.g. if no exemption applies under an applicable tax treaty).
- **Registration tax:** The qualification of an agreement for registration tax purposes must be based exclusively on its provisions, regardless of any reference to the economic goal of the parties or other agreements between the parties. The new rule is designed to prevent the tax authorities from re-qualifying certain transactions that are subject to an immaterial registration tax into a sale of a business (which would be subject to a 3% registration tax - or higher if real estate assets are included).

Contact

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