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Italy Step up regime: Italy reinstates modified ‘step-up’ regime with 3% substitutive tax

In brief

As part of its response to the global pandemic, the Italian government reinstated the asset step-up regime in August. The regime applies a 3% substitutive tax on assets accounted for as of December 31, 2019. If a taxpayer elects the step-up, then the higher values shall be disclosed in the 2020 financial statements and can be deducted for direct tax purposes starting from the tax period that includes December 31, 2021.

In detail

Law Decree n. 104/2020 (August Decree), published in the Official Gazette on August 14, reinstated the step-up regime (the 'Regime'). The 'new' disposition applies a 3% substitutive tax rate, to be paid for stepping up the higher values of assets that shall be disclosed in December 31, 2020 financial statements. The provision will become effective upon its conversion into law, which is to occur no later than October 13, 2020.

Entitled persons

Persons eligible for the optional regime include:

1. corporations
2. other public and private entities that conduct commercial activities
3. partnerships conducting commercial activities
4. sole proprietorships
5. non-commercial entities
6. nonresident subjects with an Italian permanent establishment.

Generally, Regime eligibility is allowed for national accounting standards adopters ('OIC adopters').

Relevant assets

The Regime can be applied to tangible and intangible assets, as well as to participations in controlled and associated companies, as defined under Article 2359 of the Italian Civil Code (ICC). The relevant fixed assets and participations are those already included in financial statements in progress as of December 31, 2019 (i.e., tax period closing at December 31, 2019 for calendar-year taxpayers).

Intangible assets could include any assets that legally could be protected, such as patents, IP, licenses, trademarks, know-how, and other similar rights recorded as assets in financial statements, even if no longer recorded as fully amortized, which are still protected in accordance with current provisions.

Observation: The Regime appears to have excluded goodwill.

The Regime excludes real estate and other assets that are built or traded for taxpayer ordinary business purposes.

Unlike previous tax step-up measures, the Regime allows the step-up of each business asset without an obligation to extend the revaluation to all assets belonging to the same homogeneous category.

Values

Revaluation shall not exceed values attributable to assets, taking into consideration their consistency, production capacity, and effective possibility of economic utilization in the business, as well as their fair values and prices negotiated in Italian or foreign regulated markets.

Although there is not a mandatory technical appraisal requirement for attributing the stepped-up (i.e., higher) value to the assets, the directors and board of statutory auditors shall indicate, in their respective annual opinions, the criteria applied for the higher value determination, attesting also that such higher value was determined under Article 11 of Law no. 342/2000.

Observation: Accordingly, companies should consider, at least for assets with significant values, supporting revaluations with technical estimates or sworn appraisals, preferably prepared by independent professionals.

The step-up

Entitled persons can choose to step up the assets:

1. only for statutory and accounting purposes with a consequent capital strengthening or
2. for statutory and accounting, as well as tax purposes, through the 3% substitutive tax payment.

In both cases, the higher asset value attribution in the balance sheet will imply the recording of a corresponding revaluation reserve in net equity.

The stepped-up values have to be disclosed in financial statements following the one in progress on December 31, 2019 (i.e., for calendar-year entities, in the December 31, 2020 financial statements). Furthermore, the step-up shall be reported in the inventory books and in notes to the financial statements.

IAS adopters

For persons who adopt international accounting standards (the so-called ‘IAS adopters’), the Regime provides for the possibility to step up, for tax purposes only, any higher book value disclosed in December 31, 2020 financial statements by paying the 3% substitutive tax.

Depreciation and amortization

The Regime allows deducting the increased values for Corporate Income Tax (CIT, standard 24% rate) and Regional Tax (IRAP, standard 3.9% rate), through direct amortization or depreciation.

The increased values will be tax-relevant starting from the tax period following the one in which the substitutive tax is paid (i.e., tax period closing at December 31, 2021 for calendar-year taxpayers).

Claw-back clause

The Regime provides for a four-year claw-back period on stepped-up values, starting from the statutory financial statement in which the higher values are registered, in cases of sale, assignment to shareholders, destination outside the business purpose, or personal consumption. In that case, the capital gains and losses shall be determined based on the assets' tax basis prior to step-up.

Tax suspension reserves

If the Regime applies, an amount corresponding to the step-up (equal to all the higher asset values) has to be disclosed in net equity as share capital or income reserve in tax suspension.

Any utilization of that reserve implies an increasing adjustment to the taxable income for the same amount, including substitutive tax paid. However, it is possible to opt for tax recognition of such reserve by paying a substitutive tax equal to 10%. In case the step-up is conducted only for statutory and accounting purposes, the reserves will not be 'in tax suspension,' and their use will not be subject to any restriction or tax adverse consequence.

Observation: This last aspect is beneficial in case of operating loss realization or in case of distribution to shareholders.

Payment of the substitutive tax

Both the tax step-up of the assets and the tax recognition of the reserve are conditioned upon the payment of a substitutive tax equal to 3% and 10%, respectively.

The substitutive tax must be paid by the deadline for the balance payment of the income taxes relating to the tax period in which the revaluation occurred (i.e., June 30, 2021 where the financial year coincides with the calendar year). The substitutive tax may be paid in three equal annual installments.

The takeaway

Groups with significant built-in gains in their Italian assets should consider applying for the tax step-up, taking into account factors like prospective taxable income, possible tax savings, step-up costs, tax depreciation period of the stepped-up assets, and statutory financial statement implications.

Do you have any questions? Our German Desk Team is at your disposal.

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Schlagwörter

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