Italian Law No. 147 of 27 December 2013 (the so-called "2014 Stability Law") and Italian Law Decree No. 4 of 28 January 2014 ("Voluntary Disclosure")

February 2014
Introduction

With its publication in Ordinary Supplement No. 87/L of the Official Journal of the Italian Republic No. 302 of 27 December 2013, the so-called 2014 Stability Law, entitled "Provisions for preparation of the annual and multi-year state budgets", became effective last 1 January.

The measure contains several provisions for preparation of the annual and multi-year state budgets. This circular lists the provisions of a fiscal nature and of greater interest to businesses.

In addition, we also considered it useful to briefly mention the provision recently issued by the Council of Ministers regarding the emergence and the repatriation of funds held abroad.
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Web tax - requirement of a vat number for purchasing online advertising

Article 1, paragraphs 33, 177 and 178

Effective 1 July, 2014, the new article 17-bis of Presidential Decree 633/1972 (VAT Decree) - called the "Web tax" - imposes:

- the obligation on subjects that pay value-added tax and that wish to purchase advertising services and sponsored online links (purchase of online advertising), to purchase them exclusively from subjects with a VAT No. issued by the Italian tax authorities;
- this obligation is aimed at both subjects with a VAT No. and private citizens who wish to purchase online advertising space and sponsored links that appear in the results pages of search engines (advertising search services), viewable in Italy during a visit to an Internet website or the use of an online service through a landline or mobile device network, to purchase them exclusively through subjects such as publishers, advertising agencies, search engines or other advertising service providers that have a VAT No. issued by the Italian tax authorities. This obligation exists even in cases where the transaction was carried out through media centres, third-party providers and other advertisers.

While, under the profile of direct taxes, when determining business income from intra-group operations subject to article 110, paragraph 7, of the Italian Income Tax Code, (transfer pricing), companies that collect online advertising and offer ancillary services must use different profit indicators than those applicable to costs incurred for the conduct of their own activities (so-called cost-plus), except in case of recourse to the international standard ruling procedure.

Finally, in order to monitor this type of operation in the fight against tax evasion, there is the obligation to purchase online advertising and ancillary services exclusively by bank or postal wire transfer, which must also identify the beneficiary, or using other payment instruments that allow the full traceability of transactions and bear the VAT number of the beneficiary.
Ace - incentive to capitalization: increase of the coefficient for the three years
2014-2016

Article 1, paragraphs 137 and 138

There is an increase of the incentive to capitalize companies, the so-called ACE (Allowance for Corporate Equity), introduced by Legislative Decree 201/2011 to reduce the difference in tax treatment between companies financed with debt (that can deduct financial expenses) and businesses financed with their own equity (that cannot deduct financial expenses) and to strengthen the capital structure of companies.

It provides for the deduction from total income of an amount equal to the notional return on the new capital, which passes from the current 3% to 4% in 2014, 4.5% in 2015 and 4.75% in 2016.

It is useful to point out that ACE rewards companies that, from 2011 onward, have increased and/or continue to increase new shareholder's equity through new equity contributions from shareholders, shareholders renouncing loans or the allocation of profits to reserves, through a deduction from taxable income (IRES [corporate income tax] or IRPEF [personal income tax]), equal to a percentage coefficient of capital increases.

The original provision that linked the coefficient to a ministerial rate to be set by 31 January of each year and equal to the yield on government securities plus 3 points, was postponed to 2017.

Subjects that benefit from the above deduction are required to determine the income tax prepayment due for the tax period in progress as of 31 December, 2014 and 31 December, 2015 using the percentage rate for calculating the notional return of own capital for the preceding tax period. Prepayments for 2014 and 2015 will, therefore, be calculated with the rates of the previous year: 2014 prepayment at 3%, 2015 prepayment at 4%.
Tax wedge - three-year incentive for new recruitment

Article 1, paragraph 132

The Stability Law restores, but with effect from fiscal year 2014, the IRAP deduction for increased employment already in force up to fiscal year 2008. From 2014 it will be possible to reduce the IRAP taxable base by the cost of new personnel hired with a permanent contract in addition to the average number of the previous fiscal year, within a maximum limit of € 15,000 for each new employee hired and within the limit of the overall increase in personnel costs classifiable in article 2425, paragraph 1B, numbers 9 and 14, of the Italian Civil Code.

The deduction can be taken for the year in which the employment increase occurs and for the following two. In order to prevent abuse, the increase is considered net of intervening employment decreases also in subsidiaries or sister companies and, in any case, is cumulative with incentives already provided by the cutting of the tax wedge, including (i) the full deduction of social security contributions and (ii) the fixed deduction of € 7,500 per employee, increased to € 13,500 for female workers and young people under age 35.

Assuming an ordinary IRAP tax rate of 3.9%, the overall benefit in the three-year period would therefore be € 1,755 (15,000 * 3.9% * 3).
Transfer price - extension of IRAP (Regional Production Tax)

Article 1, paragraphs 281 to 284

A legal interpretation rule has been introduced regarding transfer pricing in the intra-group transactions referred to in article 110, paragraph 7, of the Tax Code: this provision is also applicable to the determination of the net value of production for IRAP purposes and also for tax periods after the one in progress as of 31 December, 2007 (the fiscal year from which the IRAP tax base was "unhooked" from the IRES tax base and, instead, derived from the financial statements: in practice, in the context of IRAP, there is no interruption in the application of article 110, paragraph 7, of the Tax Code for periods both before and after 2007).

There is a provision for the non-application of the administrative sanctions provided by article. 1, paragraph 2, of Legislative Decree no. 471/1997 (from one to two hundred percent of the greater tax or the difference of the credit) to adjustments of the net value of production resulting from the application of the above interpretation rule.

We are awaiting clarifications of this provision, in particular regarding the retroactive effects of the rule, the reasonable extension of provisions on documentation obligations, also in the context of IRAP, and the exemption from sanctions for compliance with legal requirements, pursuant to article 1, paragraph 2-ter of Legislative Decree 471/1997.
Leasing - new benefits in terms of deductibility - with reduction of minimum duration

Article 1, paragraphs 162 and 163

New change to the minimum duration of financial leasing contracts for the deductibility of lease payments by the business using them.

The rules in force until 31 December, 2013 provided:

- for chattel property (such as systems, machinery and equipment), deductibility over a period of not less than 2/3 of the normal depreciation period, regardless of the duration of the contract;
- for real estate, deductibility over a period between 11 and 18 years, based on the type of business, regardless of the duration of the contract;
- for vehicles other than instrumental ones and not assigned to employees, a period equal to the depreciation period.

For contracts entered into by 1 January, 2014, lease payments are deductible:

- for chattel property over a period not less than half of the period of depreciation;
- for real estate: over a period of not less than 12 years (regardless of the type of business).
- for vehicles (not instrumental and not assigned to employees): the period remains unchanged and is equal to the depreciation period.

The changes to the rules on the deductibility of lease payments have no importance for IRAP purposes. Therefore, for the purposes of this tax, the amount of the lease payment posted to the income statement will be used, regardless of the duration of the contract.

What has not changed?

For IRES purposes, it should be noted that Legislative Decree no. 16, 2012, had already separated the tax deductibility of lease payments from the actual duration of the contract, since it could be freely negotiated between the parties, leading, in cases of durations shorter than the "tax" period, to the need to resume taxation of payments exceeding the life of the contract and relative deduction at the end of the contract (see Circular 17/E/2013).
Registration tax innovations

Article 1, paragraph 164

The insertion of a new article (8-bis) to the tariff, part one, of the Consolidated Law on the Registration Tax (Presidential Decree no. 131/1986) introduced a registration tax of 4% on the transfer, by users, of financial lease contracts for instrumental property, even that yet to be constructed and still subject to value-added tax. In such circumstances, it is expected that the tax will apply to the amount agreed on for the transfer increased by the portion of capital in lease payments still to be made in addition to the redemption price.

In this regard, we note the possible implications for companies operating in the field of renewable energy, due to the effect of the inclusion of photovoltaic systems in Instrumental Real Estate classifiable in category D/1-D10, see circ. 36/E 2013 (Photovoltaic systems - Land registry profiles and tax aspects).
Revaluation of assets

Article 1, paragraphs 140 to 146

Who is eligible - Corporations (SpA, Sapa, Srl), cooperative and mutual insurance companies, as well as European companies and European cooperatives resident in Italy, public and private entities other than companies, as well as trusts, resident in Italy, whose exclusive or main purpose is to carry out commercial activities and that adopt international accounting standards, can opt for the revaluation of business assets. Also eligible, sole proprietorships, partnerships (Snc Sas and the like) and public and the private entities referred to in article 87, paragraph 1c of the Tax Code as well as the companies and entities referred to in paragraph 1d of Article 87 and non-resident individuals engaged in commercial activities in Italy with permanent organizations.

Subject - The assets that can be revalued are real estate, instrumental chattel property and intangible assets (trademarks, patents, etc.) as well as equity investments in subsidiaries and sister companies pursuant to article 2359 of the Italian Civil Code constituting fixed assets. The assets that can be revalued must already be in the financial statements of the year in progress as of 31 December, 2012, while the revaluation must be carried out in the next financial statements after that date, whose approval deadline is after 1 January, 2014. Therefore, for subjects whose fiscal year coincides with the calendar year, the revaluation must be made in the financial statements as of 31 December, 2013. It is required to extend the revaluation to all assets belonging to the same category. Assets that are excluded are real estate (i.e., buildable land, agricultural land and buildings) whose production or exchange is the purpose of the company (real goods).

Substitute tax - For the purposes of income taxes and IRAP, the greater value is recognized from the third fiscal year (instead of from the fifth, as in the previous version of Legislative Decree no. 185/2008) and, therefore, from the 2016 financial statements, on the condition that a substitute tax of 16% is paid for depreciable assets or 12% for non-depreciable assets. For the purposes of determining the gain or loss in the event of a sale, assignment to shareholders, or for ends external to the business or self-consumption, the revaluation expresses its tax effects only from 1 January, 2017.

As in the previous version, it is possible to pay the substitute tax in three equal annual instalments, beginning in July 2014.
Exemption of equity investments

Article 1, paragraphs 150 to 152

The greater value of controlling stakes recognised independently in the consolidated financial statements as goodwill, trademarks and other intangible assets, referring to transactions with effect from the fiscal year in progress as of 31 December, 2012, can be exempted after payment of a substitute tax of 16%.

The rules for the above-mentioned revaluation are, therefore, coming into effect; the effects commence from the second tax period after that of the payment of the substitute tax and, therefore, are recognized beginning in 2016, unless revoked in the event of the sale of these investments.

For IRES and IRAP purposes, it will thus be possible to deduct the depreciation, on a non-accounting basis, over a minimum of 10 tax periods, instead of the normal 18 years.

The realignment option is not cumulative with other substitute tax regimes provided for in the case of mergers, demergers and contributions, in order to avoid a duplication of benefits.
Exemption of land and equity investments

Article 1, paragraphs 156 and 157

Those subject to IRPEF who, as of 1 January, 2014, own buildable land for agricultural use or equity investments that are not traded on regulated markets and outside normal business activities, are again allowed to re-determine the tax value of purchase on the basis of an appraisal that verifies the new value with a reference date of 1 January, 2014.

In summary, the law specifies:

→ amount of the tax:
  - 2% for non-qualified investments.
  - 4% for land and qualified investments.
→ Possession of the assets as of 1 January, 2014.
→ Affidavit of appraisal, by 30 June, 2014.
→ Payment in three annual instalments of equal amount (or one instalment) from 30 June, 2014. Interest of 3% per year will be due on instalments after the first.

In order to adjust the tax value for the purposes of the reduced market values, it is possible to obtain a "downward" appraisal, replacing the previous revaluation, with compensation with the substitute tax already paid.

The revaluation can also be done in relation to the transfer of development rights.
Partial deductibility of IMU (Municipal Property Tax)

Article 1, paragraphs 715 and 717

The Stability Law introduces the partial deductibility of IMU on real estate that is instrumental, by destination and nature, from business and self-employment income.

The IMU on instrumental real estate is thus deductible from business and self-employment income in the following measures:

- 30% for the tax period in progress as of 31 December, 2013;
- 20% the tax period in progress as of 31 December, 2014.

Real goods are not covered by the provision in question, regardless of the land registry category.

Finally, the entire non-deductibility of the tax for IRAP purposes is unchanged.
Compensations direct, additional and IRAP taxes

Article 1, paragraph 574

Commencing from the tax period in progress as of 31 December, 2013, taxpayers (businesses and professionals) that intend to use income tax credits (IRES and IRPEF), the related additional taxes, withholding tax and substitute income taxes as compensation for amounts greater than € 15,000 must request the affixing of a stamp of approval.

The rule does not specify, as is envisaged for VAT, whether such compensations can be made only starting from the sixteenth day of the month following the month in which the declaration or application from which the credit will emerge was submitted.

While, following recent clarifications provided with the occasion of Telefisco 2014, it was confirmed that the compensation of these tax credits, even for amounts greater than € 15 000, is permitted as early as 1 January of the year following the maturity of the credit as long as the stamp of approval is affixed to the declaration from which the credit will emerge, even afterwards.
Stamp duty on financial products

Article 1, paragraphs 581 and 582

Commencing 1 January, 2014, the stamp duty on periodic communications to customers regarding financial products is increased from 1.5 to 2 per thousand.

The new rate also applies to so-called bank and postal deposits.

This tax will thus be determined by applying the new rate of 2 per thousand to the value of the financial products resulting from the statement.

In the presence of periodic statements that begin or end during the year, the tax will have to be proportional to the days of the statement period.

The minimum tax of € 34.00 per year, proportional to the statement period, is no longer required.

Commencing 1 January, 2014, the rate of 2 per thousand will be applied to customers other than individuals. The maximum tax due may not exceed € 14,000 (the previous limit was € 4,500).
Tax bills without interest within two months

Article 1, paragraphs 618 to 624

The 2014 Stability Law introduced an amnesty for tax bills and enforcement notices that will be paid in a lump sum by 28 February, 2014.

The reduction mainly consists of lowering the interest due at the start of collection procedures and late-payment, for the lump-sum payment of the amount sent for collection (or the remainder still due in the case of instalment payments already in progress) in addition to the collection commission (currently 8 percent).

This reduction applies in particular to charges sent for collection by state offices, tax agencies, regional authorities, provinces and municipalities up to 31 October, 2013.

Therefore, this reduction applies to charges resulting from enforcement orders for IRPEF, IRES, IRAP and VAT beginning from the 2007 tax period, as well as INPS (social security) contributions and local revenue of a non-tax nature (such as traffic fines, fees, etc.).

In order to allow access to the amnesty, the forced collection of amounts subject to reduction, and the related statute of limitations, will be suspended until 15 March, 2014.

As regards the methods for accessing the amnesty, it should be noted that taxpayers will not receive any notice about the possibility of taking advantage of this reduction. Taxpayers will thus have to check their own debtor situation and, possibly access the amnesty by paying the amounts due (taxes, penalties and collection commission) in a lump sum by 28 February, 2014.

Equitalia will send notice of the settlement of the debt by 30 June, 2014.
"2 per thousand" tax on assets held abroad

Article 1, paragraphs 581 and 582

The 2014 Stability Law increased the tax rate on the value of financial assets held abroad (IVAFE), which will go from 1.5 per thousand for 2013 to 2 per thousand for 2014.

This tax applies to cross-border financial investments held by individuals resident in Italy.

IVAFE is also due for foreign investments in the name of companies or other legal entities, if such persons are acting as "mere intermediaries" allowing the individual resident in Italy to have the effective availability of the investments (Agenzia delle Entrate [Italian Internal Revenue Service] circular 28/E of 2012).

Cash held in foreign current accounts is, instead, subject to a fixed tax of € 34.20, if the average balance in the account is greater than € 5,000.00.

The IVAFE is paid on the initiative of the taxable person, since foreign intermediaries cannot substitute the taxpayer.

The taxpayer is therefore required to calculate the tax, using the market value of the investment at the end of tax period or period of ownership as the taxable base of reference.

The payment of the IVAFE requires two advance payments during the year and the balance by 16 June of the year following that to which the tax refers.

The order of the Director of the Agenzia delle Entrate of 18 December, 2013 ruled that this data must be indicated on schedule RW of the Unico form, which will also contain the data previously entered on schedule RM.
Transformation of deferred assets into tax credits

Article 1, paragraphs 167 to 171

Commencing from the fiscal year in progress as of 31 December, 2013, the order expands the possibility of converting deferred assets entered in the financial statements to tax credits.

The new provision also equates losses on credits that, based on current tax regulations, were not yet deducted, to write-downs. It follows that, starting from the fiscal year in progress as of 31 December, 2013, it will also be necessary to calculate this type of loss on credits in addition to write-downs.

In addition, the possibility of transforming deferred IRAP tax assets to tax credits, putting an end to any doubts of interpretation generated by the original rule.
Complaints and mediation

Article 1, paragraph 611

The complaint, a measure intended to reduce tax litigation for the purpose of the total or partial cancellation of the contested act (for cases with value not exceeding € 20,000) has been revised by the 2014 Stability Law.

In particular, the rule set out, under penalty of inadmissibility of the appeal, the taxpayer's obligation to start a preliminary procedure through an application attached to the appeal, only following which was it possible to initiate a case before the Tax Commission.

This procedure could take up to 90 days before the applicant formally appeared in court, during which time the parties (Agenzia delle Entrate and taxpayer) could reach an agreement to avoid litigation.

The first and most significant change consists in a mitigation of the "trial penalty" provided for in the event of failure of the administrative procedure described above.

In fact, the failure to carry out the preliminary obligation no longer results in the inadmissibility of the appeal, but a mere bar to further proceedings, determined by the judge on the request of the Agenzia delle Entrate.

Consequently, if the taxpayer should file an appeal directly or appears in court before the term of 90 days, the trial will simply be "suspended" until the completion of the mediation attempt.

The terms for appearing in court were also clarified for the taxpayer. In the previous version, the appeal had to be filed within 30 days from either the end of the 90 day period, in the case of silence on the part of the Agency, or from the notice of response to the mediation request.

Now, however, the deadline for the appearance in court is certain, and the taxpayer must file the appeal within 30 days from the end of the 90-day term.

A new 9-bis was also introduced in which the sums that are the object of the complaint may not be collected until the limit for appearing in court has passed.
Voluntary disclosure

Italian Law Decree No. 4 of 28 January, 2014
(OJ, General Series No. 23 of 29 January, 2014)

Article 1

The voluntary disclosure program provides a series of measures to allow the emergence of capital held abroad and its possible repatriation.

The program, which was presented by the European Commission in Communication to the Parliament and the Council No. 722 of December 6, 2012 regarding the plan of action against fraud and tax evasion, is governed by the Law Decree that was approved on 28 January, 2014 and went into effect on January 29, 2014 with its publication in the Official Journal.

The target of the provision are individuals, non-commercial organizations, simple partnerships and the like, resident in Italy, which have established or directly or indirectly hold (thus also the beneficial owners) investments abroad or foreign activities of a financial nature, likely to produce income taxable in Italy.

With respect to the "shields" of the recent past, this program will be a long-term tax-compliance tool, oriented to allowing disclosure within a time window that will close on 30 September, 2015. The voluntary disclosure procedure can thus be activated only until 30 September, 2015 and can regard only violations committed up to 31 December, 2013.

In addition, unlike in the past, the beneficial aspects exclusively regard profiles of a disciplinary nature. In fact, the program requires full payment of the tax due, as will be determined after investigation, while the main benefits for the taxpayer have to do with administrative and criminal sanctions.

From the point of view of criminal law, the measure excludes criminal liability for the offences of misrepresentation and failure to submit the declaration (articles 4 and 5 of Legislative Decree no. 74/2000), while the penalties for fraudulent declarations (articles 2 and 3 of Legislative Decree no. 74/2000, false invoices, declarations or other devices) are reduced by up to half.

From the administrative point of view, the decree provides instead for the reduction of fines to half the statutory minimum if the financial assets are transferred to Italy or an EU member state or a state that allows an effective exchange of information with Italy. Otherwise, the penalties are the statutory minimum reduced by one-fourth.
The voluntary disclosure procedure sets out that, at the time for the request, the taxpayer must show complete documentation of the investments and financial activities established or held abroad, also directly or through third persons, how they were established and the gains realized. The request to participate must include all tax periods for which, as of the date of submission of the request, the statute of limitations for audits and prosecutions of violations have not expired. The methods for submitting requests to participate in voluntary disclosure and the payment of the related tax liabilities, as well as any other procedure, will be addressed in an upcoming order of the Director of the Agenzia delle Entrate.

Participation in voluntary disclosure is not allowed if the request is submitted after the taxpayer is already being audited or investigated. This exclusion also applies in cases where formal knowledge of the circumstances came from persons jointly and severally liable for the taxes or who participated in the offence.

Finally, there are criminal penalties for anyone who, during the voluntary disclosure procedure, shows or submits documents that are totally or partially false or provides data and information that are untrue.