

Bird & Bird

Budget Law 2022 and Tax-Labour Decree: the main tax changes for enterprises



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The Law 30 December 2021, no. 234 (so-called “Budget Law 2022”), which introduces various provisions to support the national economy with effect from 1 January 2022, was published in the Official Gazette of 31 December 2021.

In addition, Law 17 December 2021, no. 215, converting the Decree-Law of 21 October 2021, no. 146 (the so-called “Tax-Labour Decree”), which includes measures relating to income tax, tax collection, labour and social security, that were published in the Official Gazette of 20 December 2021.

Below are the main changes for enterprises introduced by the Budget Law 2022 and the Tax-Labour Decree in the tax area.

Direct taxes

Step-up of corporate assets and extension of the tax depreciation of trademarks and goodwill

Budget Law 2022, art. 1, par. 622-624

Paragraph 8-ter has been introduced to Article 110 of Decree-Law no. 104/2020, which provides for the reduction of the deduction of the trademarks and goodwill depreciation from one eighteenth to one fiftieth per fiscal year.

Alternatively, it is possible to:

- maintain the deduction at one eighteenth against the payment of the substitute tax referred to in art. 176, par. 2-ter, Italian Tax Code (*i.e.* from 12% to 16%), net of the 3% already paid for the step-up;
- to revoke, even partially, the measure, renouncing to the tax effects of the step-up and requesting the refund of the 3% substitute tax paid or using the amount for offsetting in the F24 form. Nothing is envisaged from a civil law perspective, but it is assumed that the higher values recognised in the Financial Statements would remain unchanged, thus maintaining a dual track.

The changes take effect as of 2021, *i.e.*, from the fiscal year following the one in which the step-up was made.

The implementation of the provision is subject to a future Provision of the Revenue Agency.

Suspension of depreciation

Budget Law 2022, art. 1, par. 711

The measure extends to the 2021 Financial Statements the exemption introduced by art. 60, par. 7-bis of the Law Decree no. 104/2020, which provided for the right to suspend up to 100% of the annual depreciation of tangible and intangible assets in the 2020 Financial Statements that were not prepared in accordance with international accounting standards. The measure has therefore been extended to the following fiscal year, but only in favour of those entities that have already suspended the entire depreciation in the 2020 Financial Statements, by excluding those who have not benefited from the suspension or have benefited from it for less than 100%.

It should be noted that entities applying this rule allocate profits equal to the suspended depreciation to an unavailable reserve, comply with specific disclosure requirements in the Notes to the Financial Statements and are allowed to deduct the suspended depreciation, even if not expensed in the Profit & Loss, for corporate income tax purposes.

Annual limit of credits that can be offset in the F24 form or refunded

Budget Law 2022, art. 1, c. 72

The Budget Law provides for an increase to 2 million euro of the annual limit provided for by art. 34, par. 1 of Law 388/2000, of the cumulative amount of tax and social security credits to be used for offsetting in the F24 form or refunded to tax account holders with the “simplified” procedure.

It should be noted that the limit of 2 million euro per year had already been set, on a transitional basis, for the year 2021.

Indirect taxes

Indirect taxation at a fixed rate for commercial buildings transferred with a going concern

Budget Law 2022, art. 1, c. 237

It is provided that, in the event of the transfer of a going concern, with the continuation of the activity and the maintenance of the occupational structure, the transfer of the commercial buildings is subject to registration tax and to mortgage and cadastral taxes at a fixed rate of 200 euro each (in lieu of registration tax at the proportional rate of 9%). In the event of the cessation of the activity or the transfer of the buildings purchased with the above-mentioned benefit, before 5 years have elapsed since the purchase, registration, mortgage and cadastral taxes are due at the ordinary rate.

Postponement of the abolition of the *esterometro*

Tax-Labour Decree, art. 5, c. 14-ter

The obligation to transmit via SdI the data relating to transactions carried out with non-resident counterparties, in the format of the electronic invoice, is postponed from 1 January to 1 July 2022. Therefore, for the first half of 2022, the current methods of submitting the so-called “*esterometro*” have been confirmed, *i.e.* the massive sending of data by the last day of the month following the end of each quarter (30 April for the first quarter of 2022 and 31 July for the second quarter of 2022).

Postponement of plastic tax and sugar tax

Budget Law 2022, art. 1, par. 12

The enforcement of the discipline related to the tax on the consumption of manufactured goods with a single use (*i.e.* plastic tax) and the tax on the consumption of sweetened soft drinks (*i.e.* sugar tax) is postponed until 1 January 2023.

Tax incentives

Amendments to the new Patent Box regime

Budget Law 2022, art. 1, c. 10

The Budget Law has made some significant changes regarding the new Patent Box regime introduced by Law Decree no. 146/2021 of 21 October. The Decree,

in fact, repeals the previous Patent Box regime transforming it from a tax relief for revenues deriving from the exploitation of intangible assets into an extra deduction of R&D costs incurred in relation to certain types of intangibles.

The Budget Law introduced some amendments to the new “extra deduction” regime, in particular:

- the new provisions will be applicable starting from FY 2021 (*i.e.* from FY 2021 it will no longer be possible to exercise the option for the “old” Patent Box regime);
- the extra deduction will be equal to 110% of R&D costs (instead of 90% as per the Decree);
- trademarks and know-how are excluded from the new regime;
- a recapture mechanism has been introduced whereby it is possible to benefit from the extra deduction not only for R&D expenses incurred from the FY in which the intangible asset obtains an industrial property title onwards, but also for those incurred in the previous eight fiscal years;
- it is possible to combine the extra deduction with benefits deriving from the R&D tax credit.

As already regulated by the Decree, the election for the new regime will be valid for five years, irrevocable and renewable. Through the preparation of appropriate documentation, the contents of which will be defined by a specific provision of the Revenue Agency, taxpayers could benefit from the penalty protection regime with reference to the extra deduction of R&D costs.

Tax credit for investments in “4.0” capital goods

Budget Law 2022, art. 1, c. 44

The Budget Law extends to 2025 the benefit for “4.0” tangible and intangible assets, modifying the extent to which it can be used.

The tax credit is granted to companies investing in new tangible assets indicated in Annex A to Law 232/2016, from 1 January 2023 to 31 December 2025, or by 30 June 2026, provided that by 31 December 2025 the order has been accepted by the seller and payments in advance amounting to at least 20% of the acquisition cost have been made.

The tax credit is granted at:

- 20% of the cost, for investments up to 2.5 million euro;

- 10% of the cost, for investments above 2.5 million euro and up to 10 million euro;
- 5% of the cost, for investments above 10 million euro and up to 20 million euro.

With reference to investments in intangible assets “4.0”, included in Annex B of Law 232/2016, the tax credit is granted at:

- 20% of the cost, with a maximum limit of eligible costs of 1 million euro, for investments made from 16 November 2020 to 31 December 2023 (or by 30 June 2024 with reservation);
- 15% of the cost, with a maximum limit of eligible costs of 1 million euro, for investments made from 1 January 2024 to 31 December 2024 (or by 30 June 2025 with reservation);
- 10% of the cost, with a maximum limit of eligible costs of 1 million euro, for investments made between 1 January 2025 and 31 December 2025 (or by 30 June 2026 with reservation).

Tax credit for investments in R&D and innovation

Budget Law 2022, art. 1, c. 45

The tax credit for investments in R&D, green transition, technological innovation “4.0” and other innovative activities is extended with some changes.

The tax credit is provided for:

- research and development activities, until fiscal year 2022, in an amount equal to 20% of the eligible cost base up to 4 million euro and, from the following fiscal year until 31 December 2031, in an amount equal to 10% of the eligible cost base up to 5 million euro;
- technological innovation activities, until fiscal year 2023, in an amount equal to 10% of the eligible cost base up to 2 million euro and, from the following fiscal year until 31 December 2025, in an amount equal to 5% of the eligible cost base up to 2 million euro;
- creative design and design activities, until fiscal year 2023, in an amount equal to 10% of the eligible cost base up to 2 million euro and, from the following fiscal year until 31 December 2025, in an amount equal to 5% of the eligible cost base up to 2 million euro;
- technological innovation 4.0 and green transition activities, until fiscal year 2022, in an amount equal to 15% of the eligible cost base up to 2 million euro, for fiscal year 2023 in an amount equal to

10% of the eligible cost base up to 4 million euro and from the following fiscal year until 31 December 2025 in an amount equal to 5% of the eligible cost base up to 4 million euro.

Tax collection and litigation

Tax Collection Notices – Postponement of payments to 180 days

Budget Law 2022, art. 1, c. 913

A postponement of the deadline to pay taxes requested by the Revenue Agency through Tax Collection Notices (“cartelle di pagamento”) has been provided. In particular, the amount requested with Tax Collection Notices notified from 1 January 2022 to 31 March 2022 could be paid within 180 days (instead of the regular 60 days).

The provision mirrors the one already introduced with Law Decree n. 146/2021 (so called Tax-Labour Decree) with respect to the Tax Collection Notices notified as of 1 September 2021. The benefits of the postponement for taxpayers are that no interest will apply following the initial 60 days expiry date and no enforcement actions aimed at the collection of taxes will take place. Moreover, the postponement will not cause the duplication from 3 to 6% of the collection costs due to the Revenue Agency. The postponement, however, does not apply to the deadline to appeal the Tax Collection Notices which remain 60 days.

Moreover, the postponement does not apply to the Notice for Tax Payments deriving from Tax Assessments already notified (“Avviso di Presa in Carico”) and to the requests of voluntary regularizations (“Avvisi Bonari”).

Reimbursement of R&D Credit

Tax-Labour Decree, art. 5, c. 7-12

Many taxpayers in past years have taken advantage of the tax credit for Research and Development provided by art. 3 of Law decree n. 145/2013, converted into Law n. 9/2014. The R&D tax credit was calculated based on the increase in R&D costs with respect to the three prior fiscal years. The Revenue Agency has concentrated its audit activity on verifying the legitimacy of R&D Credits granted to taxpayers to check whether the relevant conditions were satisfied. Several tax assessments were notified to taxpayers, since tax auditors disallowed the benefits, considering the R&D tax credit non due or non-existing with significant

consequences from an administrative (and in certain cases criminal) penalty.

To prevent negative consequences for taxpayers and having acknowledged the technical difficulties for the Revenue Agency to adopt a legitimate approach, with consequent uncertainties for taxpayers, the Government has launched a program for the reimbursement of the R&D tax credit from taxpayers (see Tax-Labour Decree, art. 5, paragraphs 7-12). In particular, those taxpayers that have taken advantage from the R&D tax credit in the period following the one pending as of 31 December 2014 and until 31 December 2019 could refund the relevant amounts to the Revenue Agency in case they have doubts regarding their legitimacy. The program could not be addressed to cure fraudulent behaviors. As a result, the R&D tax credit shall have to be refunded only by taxpayers which had effectively borne the relevant costs.

Taxpayers may avail themselves of the program by filing a request to the Revenue Agency within 30 September 2022 and paying the relevant amount in full within 16 December 2022 or in three different annual installments with deadline 16 December 2022.

Other provisions

Intrastat Forms

Determination no. 493869/RU of 23 December 2021, Customs Authorities

The Customs Agency has adopted, in agreement with the Revenue Agency and the National Statistics Institute, the amendments to the Intrastat Models introduced by Regulation (EU) no. 2020/1997 and Legislative Decree 192/2021.

According to these amendments:

- the obligation to submit the purchase form (INTRA 2-*bis* and INTRA 2-*quater*) on a quarterly basis is abolished;
- the monthly submission threshold is raised (from 200,000 euro) to 350,000 euro (for at least one of the previous four quarters);
- in the lists relating to intra-Community acquisitions of goods (INTRA 2-*bis*), the information on the country, the VAT code of the supplier and the amount of currency transactions are no longer required;

- in the lists of services received (INTRA 2-*quater*), in addition to the VAT code of the supplier and the amount of the foreign currency transactions, the data on the method of supply, the method of collection and the country of payment are also abolished;
- in the lists relating to supplies (INTRA 1-*bis*), the obligation to include information on the non-preferential origin of the goods dispatched is introduced for statistical purposes;
- a new section dedicated to intra-Community supplies under the 'Call-off stock' regime (INTRA 1-*sexies*) is introduced.

The provisions contained in the measure apply to the statements with reference periods starting from 1 January 2022.

Anti-fraud controls in relation to declarations of intent

Measure of the Director of the Revenue Agency no. 293390 of 28 October 2021

This measure identifies specific risk analysis and control procedures to be carried out on subjects who intend to make use of the VAT frequent exporter regime, as per Article 8, paragraph 1, letter c), of Presidential Decree no. 633 of 1972 - after submitting the declaration of intent - in order to verify that they actually meet the requirements to be eligible for such a regime.

Legal interest rate at 1,25%

Ministerial Decree 13 December 2021

The legal interest rate is set at 1.25% per annum from 1 January 2022.

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