Reduced taxation of profits reinvested for the acquisition of new instrumental assets and/or the increase in employment

Introduction

According to article 8 of the draft of 2019 Budget Law, under specific conditions a reduced tax rate will apply with reference to the reinvestment of profits.

In particular, change of legislation provides for the reduction of 9 percentage points of the applicable tax rate(s)[1] for the quota of profits reinvested in the company and destined to the acquisition of new instrumental assets and the increase in employment. The mentioned reinvestments must be addressed to production structures located in Italy.

In fact, the new tax benefit will replace the tax amortization regime "*Super ammortamento*" as well as the Notional interest deduction benefit "*Aiuto alla crescita economica (ACE)*", while article 10 of the draft of 2019 Budget Law, extend the tax amortization regime "*Iper ammortamento*" for a further tax period, even if in a reformulated version.

Tax payers interested by the reduction of the income tax rate(s)

The reduced tax rate(s) will be applicable for limited liability companies, members of partnerships and individual entrepreneurs, while professionals seem to be excluded.

Based on article 8, paragraph 4 of the Draft the reduced tax rate will apply also in case the tax consolidation regime is adopted and, according to paragraph 7, the reduction can also be cumulated with other tax benefits, except for those providing for a flat-rate regime in determining the taxable income.

Profits to be considered

The draft of 2019 Budget Law states that it can be considered only profits allocated to reserves others than those not available, which have been realized starting from the tax period in progress on 31 December 2018 and net of the any reduction of the net equity with attribution to shareholders / participants.

Acquisition of new instrumental assets

Article 8, paragraph 2, letter b) of the Draft comprise a wide range of investments, including for example the extension of existing industrial facilities, while it expressly excludes investments in real estate and in vehicles assigned in fringe benefit to employees. The draft also clarifies that the benefit will apply also in case of investments realized through financial lease contracts.

The quota of investments eligible for the reduced rate must be determined, for each tax period, based on the amount of deductible depreciation of the new instrumental assets[2] and is subject to limits based on the increase of the instrumental assets compared to the tax period in progress on 31 December 2018, which have to be determined by a complex calculation.

Compared to the past it can be pointed out that, while the "*Super ammortamento*" was applicable regardless the financing modalities, investments will benefit from the reduction of the tax rate(s) only in case of financing through reinvestment of profits. The provisions by article 8 of the Draft also entails that loss-making companies couldn't benefit from the lower tax rate[3].

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According to article 88 of the draft of 2019 Budget Law, the Notional interest deduction benefit, which exceeds the taxable income of the tax period in progress on 31 December 2018, can be carried forward and utilized in succeeding tax periods.

Increase in employment

Article 8, paragraph 2, letter c) of the Draft states that in case of reinvestment of profits for the increase in employment, the reduced tax rate is applicable if the following conditions are met:

(i) Increase of the average total number of employees[4] compared to the 30 September 2018, net of decreases in other companies of the same group[5];
(ii) Increase of personnel costs (classified in P&L in item B9 or B14) compared to the costs resulting from the financial statements regarding the tax period in progress on 31 December 2018.

If both conditions are met, it is necessary to quantify the personnel costs incurred during the fiscal year for the new employees, which must be compared with the total increase of personnel costs indicated above under point (ii). The reduced tax rate(s) will apply only with reference of the lower of the two amounts, which in any case cannot exceed the amount of reinvested profits.

It is important to note that the draft doesn't distinguish between open-ended contracts and fixed-term contracts, while employees with part-time employment contracts can be considered only in proportion to the hours worked in respect of the hours foreseen be the National Contract.

Further considerations

Article 8, paragraph 3, provides also specific rules for carrying forward the amounts regarding profits, investments and personnel costs, which cannot be considered in a specific tax period for example due to fiscal losses.

If further information is required, please refer to your LED Taxand contact or to jpbaroni@led-taxand.it or koberhauser@led-taxand.it.

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1 For tax payers subject to corporate income tax IRES the applicable tax rate will be 15% instead of 24%, while tax payers subject to personal income tax IRPEF the will benefit form a reduction of 9 percentage points of the progressive tax rates applicable in the specific case.

2 The tax benefit will be recognised in the different tax periods based on the depreciation schedule of the asset.

3 It implies that companies with a taxable income, but statutory accounting losses will be penalised compared to companies with a taxable income and statutory accounting profits.

4 Only employees carrying out a commercial business activity could be considered.

5 Article 8 of the draft of 2019 Budget Law refers to subsidiaries and associated companies pursuant to art. 2359 of the Italian Civil Code.

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