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ALERT MEMORANDUM

Italy's Further Tax Measures to Mitigate the Economic Effects of COVID-19

August 19, 2020

On August 14, 2020, the Italian Government adopted Law Decree No. 104 (the "Decree")[1] that introduces new tax measures to mitigate the effects of the ongoing Coronavirus Disease 2019 ("COVID-19") outbreak, such as re-opening the window for taxpayers to step up the accounting value and/or tax basis of business assets and the further postponement of certain tax payments.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

ROME

Vania Petrella
vpetrella@cgsh.com

Paola Albano
palbano@cgsh.com

ROME
Piazza di Spagna 15
00187 Rome, Italy
T: +39 06 69 52 21

MILAN

Gianluca Russo
grusso@cgsh.com

MILAN
Via San Paolo 7
20121 Milan, Italy
T: +39 02 72 60 81

[1] The Decree is in force as of August 15, 2020. Under Italian law, a law decree is adopted by the Italian Government and has the force of law. However, it lapses unless it is ratified by the Italian Parliament within 60 days. The Parliament may also introduce amendments.

A. *Business Assets' Step-up*

The Decree gives Italian corporations and commercial entities an opportunity to access a special temporary regime, already introduced in the past, that enables to step up the accounting value and/or tax basis of business assets. Contrary to past versions, this set of rules appears to be more generous as taxpayers may not only cherry pick the individual eligible assets but also decide whether to limit the step up to the accounting value or extend it to the tax basis.

GAAP adopters may elect to step up the value of any individual asset, whether tangible or intangible, including equity holdings of at least 20% voting rights in the ordinary shareholding meeting recorded as fixed financial assets, but excluding real estate held for trading by real estate companies, insofar as that such assets are recorded in the financial statements of the period pending on December 31, 2019. The accounting step-up election has to be made in the 2020 financial statements and explained the related notes.

The equity reserve stemming from such step-up would be recorded as a special reserve that has not been subject to tax. However, if taxpayers intend to distribute it (all or any part thereof), they can opt to pay a 10% substitute tax (on its entirety or on a portion) either in one instalment (no later than June 30, 2021) or in three annual equal payments (June 30, 2021, 2022 and 2023), including by offsetting the amount due with any available tax credits (up to Euro 700k or 1 million as of 2020).

Moreover, taxpayers can opt to step up the tax basis of such assets to align it to the new accounting value, by paying a 3% substitute tax, to ensure (i) its tax depreciation/amortization as of 2021; and (ii) a lower taxable capital gain in case of a disposal as of January 1, 2024[2].

IFRS adopters can also access these beneficial rules by stepping up the tax basis of assets marked-to-market (including equity holdings of less than 20% of voting rights not held for trading) by paying the substitute taxes indicated above.

B. *Tax and Social Security Payment Deadlines' Further Deferral*

Withholding taxes, VAT, social security and compulsory insurance premium payments postponed for the COVID-19 emergency to September 16, 2020[3] are further postponed as follows: 50% may be paid either in one instalment or spread on a straight-line basis over a four-month period as of September 16, 2020; the remainder may be paid on a straight-line basis over a twenty-four month period as of January 16, 2021.

Penalties and interest are waived.

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[2] If a disposal, such as a sale or a distribution to shareholders, of the stepped-up assets were to occur prior to January 1, 2024, the ensuing capital gains/losses would be determined on the historical tax basis.

[3] *See* Article 126 and 127 of Law Decree No. 34 of May 19, 2020 and Article 18 and 19 of Law Decree No. 23 of April 8, 2020. Both business or professional services firms located in Italy can access the measure insofar that (i) as in March or April 2020 they had a turnover or earned revenues at least 33% lower that turnover or revenues recorded in March and April 2019, and (ii) in 2019 they had a turnover or earned revenues not exceeding Euro 50 million. Such reduction must be of at least 50%, if in 2019 they had a turnover or earned revenues in excess of Euro 50 million. No turnover/revenue reduction requirement is contemplated for business of professional services firms that commenced their operations after March 31, 2019 and for charitable entities. Moreover, Italian self-employed taxpayers having 2019 revenues not exceeding Euro 400,000 can access the measure if they have opted not to be subject to withholding taxes with respect to payments received between March 17 and May 31, 2020 and have not incurred any employment-related expenses in the previous month (https://www.clearygottlieb.com/-/media/files/alert-memos-2020/italys-new-measures-to-mitigate-the-economic-effects-of-covid19-pdf.pdf).