



Updates from the Growth Decree in Italy

Law Decree 30 April 2019 no. 34 introducing urgent measures for economic growth ("Growth Decree") was converted into Law 28 June 2019 no. 58 with amendments. The conversion Law was published in the Official Gazette on 29 June 2019 and entered into force on 30 June 2019.

LED Taxand summarises hereinafter the following selected news introduced by the Growth Decree, which could have an impact on multinational enterprises:

1. tax neutrality for real estate companies in securitisation transactions;
2. mandatory consultation of the taxpayer before the tax assessment;
3. Simple Investment Company (S.I.S. - Società di Investimento Semplice);
4. exchange of shares by contribution;
5. reduced CIT rate on retained earnings.

Tax neutrality for real estate companies in securitisation transactions.

Article 23 of the Growth Decree modified article 7.1 of Law 30 April 1999 no. 130, introducing relevant news regarding the tax treatment of real estate companies in securitisation transactions ("Reoco"), which operate for the exclusive benefit of the securitisation transactions. In particular, the Growth Decree provides that assets and rights acquired by Reoco in the context of a securitisation transaction are segregated from Reoco's assets. Consequently, from a direct taxes viewpoint, the income deriving from the management of these segregated assets is not taxable at Reoco level nor at the level of the securitisation vehicle ("SPV 130"). In addition, fixed registration, mortgage and cadastral taxes apply: (i) to the transfers of assets and rights to Reoco and (ii) to the subsequent transfers of real estate assets from Reoco to entities that carry out business activity, provided that the purchaser declares that it will transfer them within 5 years from the acquisition.

Therefore, if carefully structured, these transactions could be tax neutral for direct tax purposes (at SPV 130 and at Reoco level as well as at the level of the holders of the notes issued by the SPV 130) and for indirect tax purposes.

Mandatory consultation of the taxpayer before the tax assessment.

Article 4 of the Growth Decree introduces the obligation for the tax authorities to consult the taxpayer before issuing a tax assessment in order to clarify reciprocal positions in advance and potentially either prevent the issue of the notice of assessment or partially modify it. Such provision applies to tax assessments that will be issued starting from 1° July 2020.

In case an agreement is not reached, the tax assessment shall explicitly refer to the clarifications and documents provided by the taxpayer in the consultation phase. If the tax authorities do not consult the taxpayer, the tax assessment is invalid provided that the taxpayer proves, during the litigation, the reasons that he could have shown in the consultation process. The mandatory consultation does not apply: (i) in case of partial

tax assessments - which are quite common in practice - or (ii) in case of justified urgency.

Simple Investment Company (S.I.S. - Società di Investimento Semplice).

In order to promote venture capital, article 27 of the Growth Decree introduces the Simple Investment Company ("S.I.S."), an Italian alternative investment fund established as an investment company with fixed capital ("S.I.C.A.F."), which directly manages its assets. The S.I.S. shall meet the following requirements: (i) its net equity does not exceed Euro 25 million; (ii) its exclusive purpose is to directly invest in unlisted SMEs which are in the testing, establishment and start-up phase of the activity; (iii) it does not incur financial leverage, and (iii) its share capital is at least Euro 50,000.

The S.I.S. is exempt from the application of most of the regulations on collective management issued by the Bank of Italy and Consob (i.e. the Italian authority responsible for regulating the Italian securities market). However, the S.I.S. is required to: (i) implement a system of governance and control adequate to ensure the sound and prudent management of the S.I.S. and the compliance with the applicable provisions; (ii) sign a professional liability insurance adequate to the risks deriving from the activity carried out and (iii) apply the Consob provisions related to the marketing of UCITS.

Exchange of shares by contribution.

Article 11 of the Growth Decree broadens the scope of the beneficial tax regime granted to the exchange of shares by contribution.

The scope of the previous rule was limited to the exchange of shares where the receiving company acquires a controlling participation in the acquired company. In such a case, in order to determine the capital gain of the transferor, the value of the shares received in exchange by the transferor is equal to the increase in the receiving company's net equity as a result of the contribution.

The Growth Decree extends the mentioned regime also in case the receiving company does not acquire a controlling participation in the acquired company provided that: (i) the shares contributed represent a qualifying participation (i.e. more than 2% of the voting rights or 5% of the capital, in case of participations in listed companies; more than 20% of the voting rights or 25% of the capital, in case of other participations); (ii) the shares are contributed in companies entirely held by the transferor.

Reduced CIT rate on retained earnings.

Article 2 of the Growth Decree provides for a reduced corporate tax rate applicable as from 2019 to retained earnings. For calendar year companies, instead of the ordinary 24% CIT rate, the reduced rates are as follows: 22.5% for 2019, 21.5% for 2020, 21% for 2021, 20.5% from 2022 and 20% from 2023 onwards.