

WRITE-UP OF COMPANY ASSETS AND SHAREHOLDINGS

Law no. 40 of 5 June 2020, published in Italian Official Journal no. 143 dated 6 June 2020, converted into law with amendments DL 23/2020, the so-called Liquidity Decree.



New provisions introduced upon conversion include amendments to the write-up of company assets and shareholdings under art. 6-bis “Provisions to support the hotel and spa’s industries” and art. 12-ter “Provisions on corporate assets” (which applies to all other companies).

EDITED BY:
Our Tax Team

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ART. 6-BIS - PROVISIONS TO SUPPORT THE HOTEL AND SPA'S INDUSTRIES

Companies and commercial entities operating in the hotel and spa's industries that do not adopt international accounting standards to prepare financial statements may write up company assets and shareholdings, except for any real estate property that is produced or exchanged in the course of the company's core business ("real-estate property - products"), that are **reflected in the financial statements for the year in progress on 31 December 2019.**

The write-up:

- must be applied in one or both financial statements of the two fiscal years following the one in progress on 31 December 2019 (i.e. in the financial statements for the FY 2020 and/or FY 2021);
- must be applied to all assets of a given homogeneous category;
- must be reflected in the relevant balance sheet and disclosed in the supplementary note.

No flat substitute or other tax is due on the higher values of the assets and shareholdings in the financial statements.

The higher value of assets and shareholdings is recognized for IRES and IRAP purposes, **effective the fiscal year of the financial statements that reflect the write-up.**

If assets are transferred against a consideration, assigned to shareholders or destined to purposes other than the company's business or to entrepreneurs' personal or family use prior to the **fourth year following** the year of the financial statements that reflect the write-up, to determine the capital gain or loss reference is made to the **cost of the asset prior to the write-up.** This means that in the event that the real estate property is transferred before such term, any capital gains or losses need to be determined by referring to the tax cost of the asset prior to the write-up. Tax advance payment requirements for the tax year 2019 remain unaffected.

This provision does not apply to banks, financial intermediaries and insurance companies, state and government agencies and entities.



Further to the write-up, a specific capital reserve is recorded in shareholders' equity which is suspended for tax purposes but is taxable in the event of distribution, unless released in full or in part by applying a **10%** substitute tax.

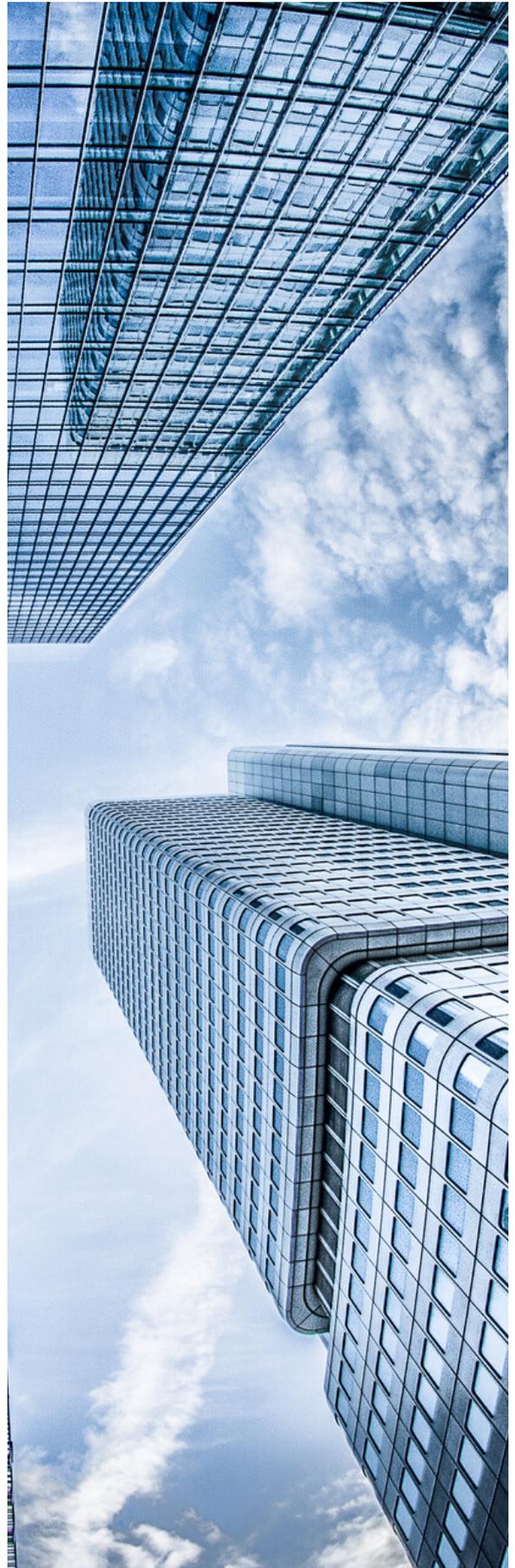
Finally, in the event of taxpayers interested in this provisions that exercised the write-up option under the 2020 Budget Act, the effects of the write-up and the release, if any, of the positive balance are triggered starting from the last financial statements for the fiscal year in progress on 31 December 2020.

ART. 12-TER - PROVISIONS ON COMPANY ASSETS FOR ALL OTHER COMPANIES (EXCEPT FOR BUSINESSES OF THE HOTEL AND SPA'S INDUSTRIES WHICH APPLY ART. 6-BIS, DESCRIBED ABOVE)

The newly introduced provision provides for the right to write up company assets and shareholdings under art. 1, paras. 696 and following of the 2020 Budget Act, in the financial statements **of the fiscal year following the one in progress on 31 December 2019, 31 December 2020 or 31 December 2021.**

The write up is made on the terms and conditions in the 2020 Budget Act 2020, recapped below.

1. The write-up may be applied by companies and entities that do not apply international accounting standards
2. Company assets and shareholdings in subsidiaries and affiliates recorded under fixed assets are eligible for writing up if they are reflected in the financial statements of the fiscal year **in progress on 31 December 2018**, with the exception of real-estate property the production or exchange of which forms the company's core business
3. The write-up must be applied to all assets of the same homogeneous category and must be recorded in the relevant balance sheet and disclosed in the supplementary note
4. The substitute tax applies at a rate of **12%** in case of depreciable/amortizable assets and **10%** if the assets cannot be amortized/ depreciated
5. The higher value is recognized for IRES and IRAP purposes starting from the third fiscal year following the one with reference to which the write-up was made
6. A **10%** substitute tax applies to release the positive balance of the write-up



The substitute tax due for the write-up and the release, if any, of the positive balance, must be settled:

- **In case of amounts equal to or lower than €3 million:** in a maximum of three annual payments of equal amount, the first one by the deadline for the payment of the balance of income taxes for the year in which the write-up is applied, and the other two by the deadline for paying the balance of income taxes for the following tax years;
- **In case of amounts higher than €3 million:** in a maximum of six payments of equal amount, and specifically:
 - The first one by the deadline for the payment of the balance of income taxes of the tax year with reference to which the write-up is applied;
 - The second by the deadline for the payment of the second or only income tax advance for the following tax period;
 - The other payments by the deadlines for the payment of the balance of income taxes and the deadline for the payment of the second or only income tax advance, for the following tax years, respectively.

The new provisions finally provides that, **only in the event of real estate property**, higher values recorded in the financial statements are regarded as recognized effective the tax period in progress on 1 December 2022, 1 December 2023 or 1 December 2024, respectively.



CONTACT US

We invite you to speak with your contact professional within the Firm for any further explanation

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