

TAX DECREE

NEWSLETTER NO. 9/2021



Decree Law no. 146/2021 so-called “Tax Decree” (hereinafter also “Decree”), on “Urgent measures in tax and economic matters, to safeguard employment and undeferrable needs”, was published in Italian Official Journal No. 252 dated 21.10.2021 and was enacted on 22 October 2021.

Major new provisions on tax matters are recapped below.

05 NOVEMBER 2021

DEFERRAL OF THE DEADLINE FOR THE ROTTAMAZIONE-TER AND SALDO E STRALCIO TAX SETTLEMENT PROCEDURES (ART. 1)

For the purposes of the preferential tax settlement procedures called “Rottamazione-ter” and “Saldo e Stralcio”, installments that originally were due:

- In the year 2020;
- On 28 February 2021;
- On 31 March 2021;
- On 31 May 2021; and
- On 31 July 2021;

are regarded as settled in time and do not trigger the invalidity of the settlement procedure if they are fully paid by 30 November 2021. A “5-day grace period” applies. Accordingly, payments are considered made by the deadline if they are settled by Monday 6 December 2021.

EXTENSION OF THE TIME LIMIT TO SETTLE TAX BILLS SERVED IN THE PERIOD FROM 1 SEPTEMBER 2021 TO 31 DECEMBER 2021 (ART. 2)

The extended 150-day time limit for performing obligations triggered by entry in the tax roll applies to tax bills served by the tax collection agent from 1 September to 31 December 2021. The standard 60-day time limit after service of process is reinstated and will apply to tax bills that will be served from 01.01.2022 onwards.



EXTENSION OF DEFERRED PAYMENT PLANS (ART. 3)

The number of outstanding instalments that trigger loss of the right to deferred payment granted for payments by instalments in progress before to the beginning of the suspension of collection consequent to the Covid-19 epidemic emergency, that is on 8 March 2020 (or 21 February 2020 in the event of taxpayers domiciled, or with registered or operating offices in municipalities included in the “Red Zone”), was ramped up from 10 to 18.

- Taxpayers that on 22 October 2021 had lost the right to deferred payment plans in progress on 8 March 2020 are automatically readmitted to such plans.
- In the event of plans in progress on 8 March 2020, the time limit for settling suspended instalments was set to 31 October 2021.

VOLUNTARY REPAYMENT OF THE TAX CREDIT FOR INVESTMENTS IN RESEARCH AND DEVELOPMENT (ART. 5, PARAS. 7-12)

- Taxpayers, which on the effective date of the Decree had used the tax credit for investments in research and development accrued starting from the tax period following the one in progress on 31 December 2014 and up to the tax period in progress on 31 December 2019 to settle tax liabilities by offsetting, may make the repayment of the used credit with no application of penalties and interest.
- The procedure is reserved for taxpayers that in these tax periods actually carried out – bearing relevant costs – research and development activities that fully or in part do not qualify as eligible activities in the sense that is relevant for the tax credit. The voluntary repayment procedure may also be used by taxpayers that made mistakes in determining the amount or in identifying eligible costs, breaching the principles that the costs must be business related or at arm’s length, and in determining the historic average of reference.
- Taxpayers that intend to apply the tax credit voluntary repayment procedure are required to send a specific application to the Revenue Agency by 30 September 2022, indicating the tax period(s) of accrual of the credit for which the application is submitted, the amounts of the credit being spontaneously repaid and all other data and elements requested in connection with eligible activities and costs. The application form’s contents and submission procedure are going to be defined by a Measure of the Director of the Revenue Agency by 31 May 2022.
- The amount of the credit used to offset tax liabilities indicated in the application submitted to the Revenue Agency must be repaid by 16 December 2022. Payment may be made in three instalments of equal amount, the first one of which must be settled by 16 December 2022 and the following two by 16 December 2023 and 16 December 2024, respectively. In the event of payment by instalments, interest accrues at the legal rate effective 17 December 2022. The procedure cannot be used to repay credits used to offset tax liabilities that were already audited and claimed back by a credit recovery measure or other taxation measures, which were final on the effective date of the Decree.

SIMPLIFIED PATENT BOX REGULATIONS (ART. 6)

The Decree rewrote “Patent Box” regulations and repealed previously applicable provisions.

- Taxpayers earning business income may exercise the option that is valid for five tax periods and is irrevocable and renewable. (A measure of the Director of the Revenue Agency will define the procedure to exercise the option.)
- For the purposes of income taxes, research and development costs incurred in connection with software protected by copyright, industrial patents, trademarks, designs, as well as legally protectable processes, formulas and information on experience acquired in the manufacturing, business or scientific fields, that the same taxpayers used, directly or indirectly, in operating their businesses, are increased by 90%. The exercise of this option is also retained to determine net revenues for IRAP tax purposes.
- The provisions apply on condition that taxpayers exercising the option carry out research and development, including under research agreements entered into with companies other than the ones that directly or indirectly control the company, are controlled by it or are controlled by the same company, or with universities or research entities and similar bodies, to create and develop the assets listed above.
- Taxpayers that intend to benefit from the higher tax deductibility of costs may indicate any information necessary to determine the increase in appropriate documents prepared in accordance with a measure of the Director of the Revenue Agency.
- In the event of an adjustment of the increase determined by taxpayers that exercised the option resulting in a higher tax or lower tax credit, the penalty in art. 1, para. 2 of Leg. Dec. No. 471/1997 for “incorrect tax return” (from 90% to 180% of the higher tax or difference in tax credit used) does not apply provided that in the course of audits, inspections, visits or other investigation operations, the taxpayer delivers to the Tax Authorities the documents listed in the measure of the Director of the Revenue Agency appropriate to allow to confirm the correct increase. The taxpayer that has the documents required in the measure of the Revenue Agency has to inform the Tax Authorities in the tax return for the tax period in which it applies the tax benefit. In the absence of the communication attesting the presence of appropriate documents, in the event of adjustment of the increase, the penalty referred to above applies.



- These provisions apply to options exercised starting from 22 October 2021.
- The Decree does not contain specific transitional regulations for taxpayers that intended to use – or renew – the Patent box benefit for the first time with reference to 2020, that did not file the relevant income tax return yet, whose deadline is 30 November 2021. At this stage, in the absence of specific transitional regulations, these taxpayers apparently are included in the new provisions. However, when the Decree is going to be converted into Law by Parliament, specific transitional provisions could be added to expressly govern this case.



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

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