



Spring 2016 Italian Tax Update

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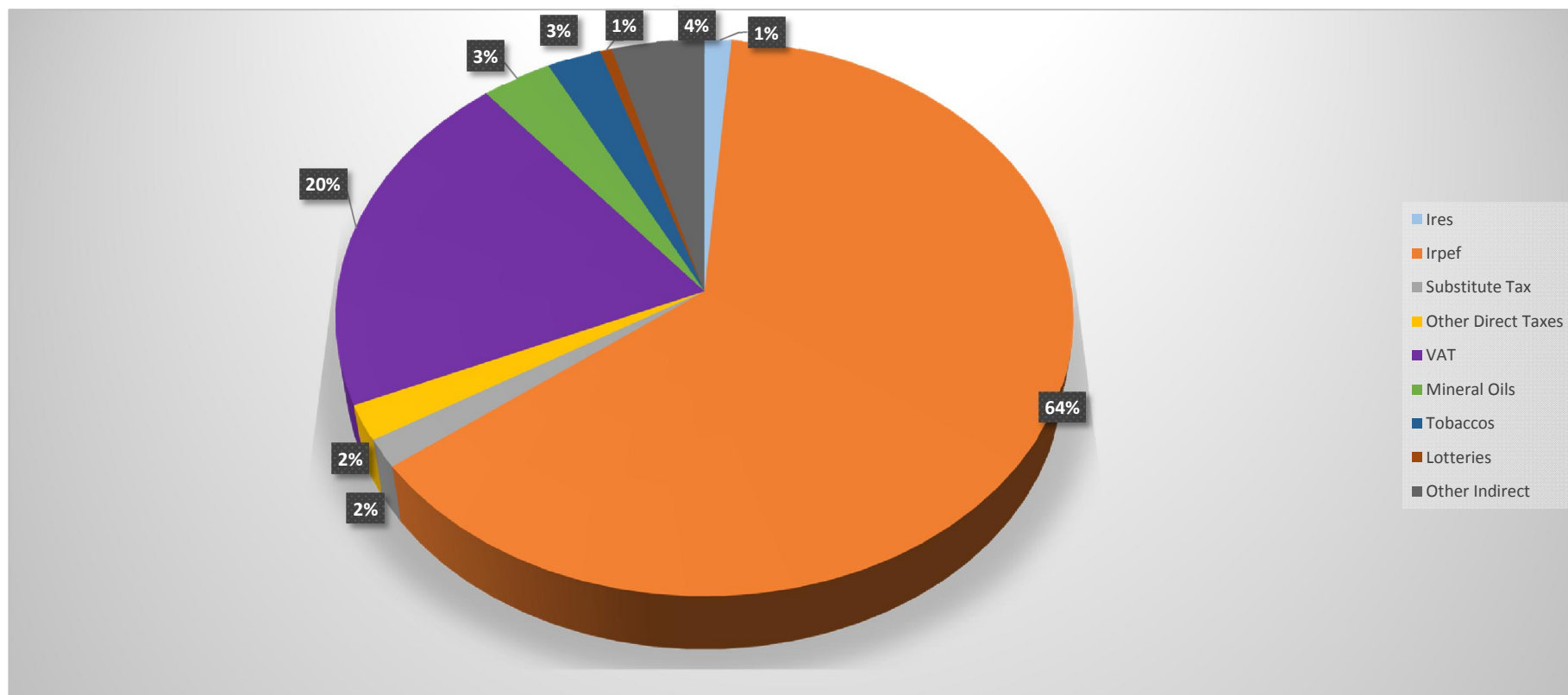
Como, 18 March 2016

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1. Tax revenues of the state budget

Tax revenues of the state budget



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2. IRPEF Update

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IRPEF rates

Income rates and brackets of income for FY 2015		
Bracket of income	Rate	Amount
Up to € 15,000	23%	€ 3,450
Over € 15,000 and up to € 28,000	27%	€ 6,960
Over € 28,000 and up to € 55,000	38%	€ 17,220
Over € 55,000 and up to €75,000	41%	€ 25,420
Over € 75,000	43%	surplus income*43%

The above does not include the municipal tax supplement from % 0.1% to 0.8% nor the regional tax supplement – from 0.70% to 3.33% depending on municipality/regione



3. IRES Update

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HISTORY OF ITALIAN IRES/IRPEG

Period	Rate
From 01.01.1982 to 31.12.1999	30%
From 01.01.2000 to 31.12.2000	37%
From 01.01.2001 to 31.12.2002	36%
From 01.01.2003 to 31.12.2003	34%
From 01.01.2004 to 31.12.2018	33%
From 01.01.2008 to 31.12.2016	27.5%
From 01.01.2017	24%

Super-depreciation

- Alfa Srl. buys a machine for € 50,000 + VAT in the month of November 2015.
- Considering the cost increase of 40%, the value by which to determine the deductible amortization amounted to € 70,000 [50,000 + (50,000 x 40%)].
- Assuming a depreciation coefficient of 20%, the depreciation schedule is so

Cost		Depreciation			Adjustment in tax return
Book	Tax	Year	Book	Tax	
50,000	70,000	2015	10,000	14,000	4,000
		2016	10,000	14,000	4,000
		2017	10,000	14,000	4,000
		2018	10,000	14,000	4,000
		2019	10,000	14,000	4,000
					50,000

Financial leasing amortization

For contracts up to April 29, 2012

For the user enterprise

- Lease installments can be deducted if the duration of the lease term is greater than or equal to $2/3$ of the amortization period determined by the table rates
- the interest implicit in the lease payments (distributed linearly over the term of the contract) is subject to the provisions of art. 96 Consolidated Income Tax Act (deductible up to the amount of interest income and the surplus by 30% in ROL).

Example

transport vehicle (purely instrumental): coefficient amm.to 20%

depreciation period five years

Minimum lease term contract for deductibility = $(5 \frac{2}{3}) = 3$ years 4 months

For fixed assets

- if $2/3$ of the length of the contract is under 11 years it is deductible if the duration of the contract is not less than 11 years
- if the duration of the contract exceeds the deduction to 18 years is allowed anyway

Financial leasing amortization

After April 29, 2012

For the user enterprise

- finance lease payments are tax deductible, irrespective of their duration, over a period equal to $2/3$ (was 50%) of the amortization period determined by the table rates
- implicit interest (distributed linearly over the term of the contract) in lease payments is subject to the provisions of art. 96 Consolidated Income Tax Act (deductible up to the amount of interest income and 30% of ROL).

Example

vehicle (used exclusively for purposes of the business): depreciation rate 20%

depreciation period five years

Regardless of the length of the lease, deductibility = $(5 \times 2/3) = 3$ years 4 months

For real estate fixed assets

- if $2/3$ of the amortization period is ≥ 18 years \rightarrow deductibility of at least 18 years
- if $2/3$ of the depreciation period between 11 and 17 years (inclusive) \rightarrow deduction equal to $2/3$ of the same period of amortization
- if $2/3$ of the lower amortization period is 11 years \rightarrow deductibility over at least 11 years

Financial leasing amortization

Dal 1 gennaio 2014

For the user enterprise

- you can deduct finance lease payments, irrespective of their duration, equal to half of the amortization period determined by the tabular rates ...
- implicit interest (distributed linearly over the term of the contract) in lease payments are subject to the provisions of art. 96 Consolidated Income Tax Act (deductible up to the amount of interest income and the surplus by 30% in ROL).

Example

transport vehicle (purely instrumental): coefficient amm.to 20%

depreciation period five years

Regardless of the length of the lease, deductibility = $(5 \frac{1}{2}) = 2$ years and 6 months

For fixed assets

- if the contract duration is ≥ 12 years → deductibility of the contract period
- if the contract duration is < 12 years → deduction equal to the minimum tax-term (12 years)

Non Operating Companies

	Threshold for Income and gains	Alternative Minimum Income
Shares, equities	2%	1.5%
Real Estate, Ships	4%-5%-6%	3%-4%-4.75%
Other tangible and intangible assets, including finance leases (plant, machinery, patents, research costs, etc.)	15%	12%

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4. Tax Reliefs and Incentives

Example

Start up, small dimension formed in 2016, assets not yet in use

- Qualifying machinery: EURO 500,000 Depreciation of machinery FY 2016, no amortization
- Amount to calculate the bonus: EURO 500,000 (no point deduction)
- Payable bonus (20%): EURO 100,000

Small business with amortization

- Qualifying Machinery: EURO 500,000
- Depreciation of machinery in FY 2016, except for subsidized goods from the bonus: EURO 100,000
- Amount to calculate the bonus: EURO 400,000 (500,000 to EURO 100,000)
- Bonus payable (20%): EURO 80,000

Definition of micro, small and medium enterprises

Parameters	Micro enterprise	Small enterprise	Medium enterprise
Number of employees less than	10	50	250
Turnover	2 million	10 million	50 million
Balance sheet assets	2 million	10 million	43 million



7. VAT Update

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History of Italian VAT

Period	Rate
From 01.01.1973 to 07.02.1977	12%
From 08.02.1977 to 02.07.1980	14%
From 03.07.1980 to 31.10.1980	15%
From 01.11.1980 to 31.12.1980	14%
From 01.01.1981 to 04.08.1982	15%
From 05/08/1982 to 31.07.1988	18%
From 01.08.1988 to 30.09.1997	19%
From 01.10.1997 to 16.09.2011	20%
From 17.09.2011 to 30.06.2012	21%
From 01.07.2012 to 31.12.2016	22%
2017	24%
2018	25%



8.1. Limitation periods

Limitation periods

- The Stability Law modifies the rules on the deadlines for assessment of income taxes and VAT

Before the 2016 Stability Law		
Expiry of Limitation Period	Incorrect Declaration	Non-declaration
	by December 31, 4th year after return deadline. Example: the 2016 tax period expires on 31 December 2021	by 31 December of the 5th year after deadline for filing return. Example: the 2016 tax period expires on 31 December 2022
After the 2016 Stability Law		
Expiry of Limitation Period	Declaration unfaithful	Non-declaration
	by 31 December of the 5th year after return deadline. Example: the 2016 tax period expires on 31 December 2022	by 31 December 7th year after return deadline. Example: the 2016 tax period expires on 31 December on 2024

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8.2. Ravvedimento operoso (Self-Correction)

Ravvedimento Operoso (Self-Correction)

NEW REDUCTIONS

Term for Disclosure

After error or omission	After relevant return filing date	Reduced penalties to	Taxes covered
Within 14 days	n/a	2/1000 (0,2%)	All taxes
From 15 to 30 days	n/a	1/10	All taxes
90 days if not «retrunable»	90 days if "returnable"	1/9	All taxes
One year from error or omission	in a year	1/8	All taxes
Two years from error or omission where no scheduled return requiremen	by the deadline for submission of the return for the following year	1/7	Only taxes administered by the Tax Agency (Agenzia delle Entrate)
or, if not 'scheduled periodic declaration, more than two years from error or omission	after the deadline for submission of the return for the year following the year during which and the offense was committed	1/6	Only taxes administered by the Tax Agency
If the amnesty takes place after the finding of a violation in PVC (official report)		1/5	Only taxes administered by the Tax Agency



8.3. Administrative Penalties

Administrative Penalties

Omitted Return - Direct taxes (ordinary rule)	<ul style="list-style-type: none"> • From 120% to 240% of the tax due with a minimum of 250 euro; • From 250 to 1000 Euros if they are not taxes due; • The penalty is doubled for persons required to keep statutory accounting records
Omitted Return - Direct taxes (return presented before deadline for next year's return)	<ul style="list-style-type: none"> • From 60% to 120% of the tax due with a minimum of 200 euro • From 150 to 500 Euros if no tax is due • The penalty is doubled for persons required to keep statutory accounting records
Failure to make Withholding Tax Return (sostituto d'imposta)	<ul style="list-style-type: none"> • From 60% to 120% of withholding unpaid with a minimum of 200 euro, • The sum of the penalties can not exceed € 50,000

Administrative Penalties

Failure to file annual VAT return (ordinary rule)	<ul style="list-style-type: none">• From 120% to 240% of the tax due for the tax period, or for operations that had to be indicated in the declaration, with a minimum of 258 euro• From 250 to 2000 euro if the person carries out only transactions for which the tax is not due
Failure to file VAT return (return presented before deadline for next year's return)	<ul style="list-style-type: none">• From 60 to 120% of the tax due with a minimum of 200 euro• From 150 to 1000 Euros if the subject performs only transactions for which the tax is not due
Incorrect Declaration	<ul style="list-style-type: none">• From 90% to 180% of the tax
Non-payment of withholdings	<ul style="list-style-type: none">• If more than 150 thousand euro, the legislature has provided for the imprisonment from six months to two years.• Who does not, in whole or in part, the withholding tax is subject to the administrative penalty of 20 per cent of the amount withheld.

Reduced penalties for prompt payment

Compliance (l'acquiescenza)

- A taxpayer who receives a notice of assessment based on data and determinations which are difficult to challenge, may, on renouncing the right to appeal, achieve a reduction of administrative penalties to 1/3 (1/6 if the assessment notice was not preceded by an official report or an invitation to be heard)
- Payment must be made, within 60 days from the notification of assessment, either in full (the reduced amount) (or the first instalment, if a payment in instalment option is taken)



9. Anti-abuse and a new GAAR

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Abuse of Law and Italy's GAAR

Abolition of article 37bis D.P.R. n. 600/1973

- Article 1 of D.lgs 5 August 2015 amends the Taxpayers' charter with a new art. 10-bis, thus providing codification in law the notion of **abuse of law**, deriving from the case law and repealing article. 37-bis of Presidential Decree 600/1973.
- **Abuse of law** arises in the presence of one or more transactions which, although in formal compliance with tax rules, are devoid of economic substance and allow the taxpayer, who effects the transaction(s), to achieve an undue tax advantage.



12. Supreme Court rulings from October 2015 to March 2016

Supreme Court rulings from October 2015 to March 2016

Sentence	Maxim
Supreme Court judgment 10.14.2015, n. 20649 (Redditometro – “Income-o-meter”)	Assessment by redditometro is valid even if the assessment is not fully motivated. Moreover, the taxpayer, in order to challenge a Tax Office claim, needs to do more than simply state that the management fees that are "too high" are paid to the spouse, who pays tax on the relevant income. It is in fact necessary to properly document the expenses incurred by the spouse.
Supreme Court judgment 14.10.2015, n. 20678 (Change in depreciation)	If the depreciation shown in the profit and loss account is increased from one year to the other without adequate justification in the notes to the accounts, any increase is not deductible in the year.
Supreme Court judgment 16.10.2015, n. 20979 (Tax Adjustment) Supreme Court judgment 13.1.2016, n. 403 (Assessment based on statements of third parties)	The acceptance by an entrepreneur of an uplift in the tax basis reported in the minutes drawn up by tax inspectors during an inspection can constitute an extrajudicial confession that legitimates, without the need for any additional element, the Tax Office's assessment. The same applies to any declaration of a taxpayer which can constitute direct evidence of higher taxable income “without the need for further evidence”. An inductive assessment against a company based on the statements of a director and employee is valid "more so when the testimonies are supported with non-accounting data".

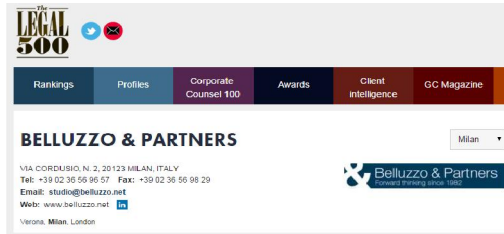
Supreme Court rulings from October 2015 to March 2016

Sentence	Maxim
Supreme Court judgment 21.10.2015, n. 21362 (Redditometro)	When determining the income of a household by “redditometro” the total income of a household is represented exclusively by the income of the spouse and children living in the household, and not other relations, inasmuch as they are “outside the notion of the family.”
Supreme Court judgment 10.2.2016, n. 2623 (Sector studies)	An assessment based on industry studies is illegitimate if it does not take into account the fact that the reduction in revenues / fees declared by the taxpayer derives from the performance, by the same, a second activity. In this case the professional income of a self-employed person (surveyor) had decreased since the same had become a partner in a company involved in the administration of condominiums which resulted in the participation of income.
Supreme Court judgment 21.10.2015, n. 21349 (Revaluation of company assets)	The revaluation of company assets (in this case, pursuant to Law no. 342/2000), which has not affected all the goods in each category it is of no effect in respect of all the goods of the that same category
Supreme Court judgment 6.11.2015, n. 22744 (Redditometro)	The new redditometro rules approved by DM 24.12.2012 do not apply retroactively. The taxpayer, in seeking to refute the findings of the Tax Office, cannot invoke the application of the principle of “favor rei” in relation to an issue which is not a question of sanctions.
Supreme Court judgment 21.10.2015, n. 21358 (Non-operating company and business rental)	The discipline of the shell company is also applicable to persons who "have a turnover of zero or almost because they have rented the business".

Supreme Court rulings from October 2015 to March 2016

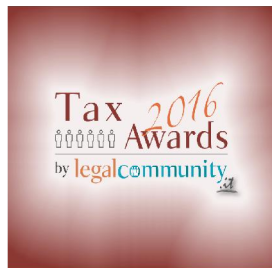
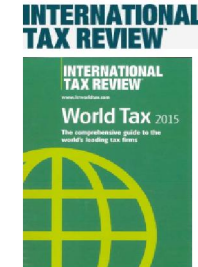
Sentence	Maxim
Supreme Court judgment 4.2.2016, n. 2190 (Explanatory notes)	Adequate explanation if a Judge deems void a resolution approving the annual financial settlements in an abbreviated form on the basis that the information contained in the Explanatory Notes relating to certain items are not sufficient for a true and fair view of the financial statements. The Judge must explain "the reasons for which compliance with the rules that ensure prescribed minimum standards, do not permit a clear view of the financial position.
Supreme Court judgment 2.2.2016, n. 1915 (Parent company of people and group VAT)	VAT group rules apply even where the parent company is a partnership. It is noted that on the Ministry of Finance in a 1986 Circular had excluded such entities from constituting a VAT group.
Supreme Court judgment 26.1.2016, n. 1334 (Check prolonged tax)	Tax audit continuing for more than 30 days. The taxpayer can "always appeal to the Ombudsman to enforce the guarantees contained in the statute" as per Law no. 212/2000.
Supreme Court judgment 4.2.2016, n. 4631 (Non-payment of VAT and new administrator)	A new director can be held liable for the crime of failure to pay VAT pursuant to Legislative Decree. N. 74/2000 even if the debt has matured before taking the assignment. In order to avoid criminal responsibility the director must check the position before accepting the office.

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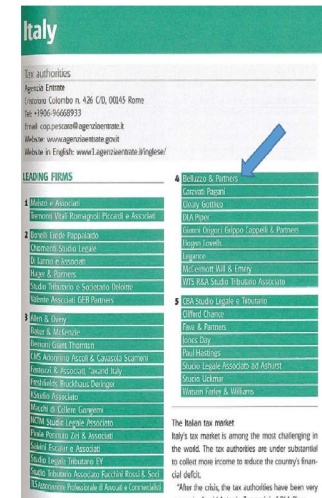
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International Legal Team of the Year





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