

Milan, February 9<sup>th</sup>, 2009

## **FISCAL NEWS FOR ITALIAN COMPANIES**

Dear clients,

We are pleased to inform you that the Italian Parliament has finally approved the New Financial Law for 2009, which includes the following formal acts:

- Decree n. 185 / November 29, 2008;
  - Law n. 203 / December 22, 2008;
  - Law n. 2 / January 28, 2009;
- whose effects have come into force on 1<sup>st</sup> January 2009.

While the Law intervenes with measures aimed at supporting families, occupation and companies, the present document refers only to corporations.

The main measures introduced by the law are the following:

### **Fixed Assets Revaluation**

- Companies which have not adopted IAS/IFRS principles, can revalue the book value of the buildings already existing in the Financial Statements period as of December 31, 2007.
- The revaluation, which concerns both depreciable and non-depreciable buildings, has a direct effect on the Balance Sheet, through an increase of both the value of the assets – up to their market value – and a correspondent increase in net equity..
- It can be applied according to two approaches:
  - 1) for statutory purposes only: in this case no tax payment is due, so that net equity increases for an amount equal to the revaluation of the building. Yet:
    - a) the increase in depreciation is not tax deductible;
    - b) in case of later sale of the assets, the taxable amount (capital gain) will be calculated on the previous historical value, without considering the revaluation.
  - 2) only for direct taxation purposes: in this case:
    - a) A **3%** substitute tax must be applied to depreciable assets and a **1.5%** tax to non-depreciable assets, so that the increase of net equity will be net of the accrual made for the substitute tax due<sup>1</sup>.
    - b) The substitute tax can be paid either by the deadline of the payment of period corporate income taxes or, alternatively, within three years (adding 3% interest on delayed payments);

---

<sup>1</sup> The original rates foreseen by the anti-crisis Decree (7% for depreciable assets and 3% for non-depreciable assets), have been amended by art. 4 of the Law Decree approved on the Council of ministers on February 6 2009 approved on 6<sup>th</sup> February 2009.

- c) The higher depreciation will be tax-deductible only starting from the Financial Statements period which includes December 31, 2013; the same will hold true for any capital-gain benefits in case of sales of the buildings.

### **Realignment of goodwill, trademarks and other assets values**

- The greater values of goodwill, trademarks and other intangible assets due to business combinations (i.e. Mergers & Acquisitions) could be made tax deductible (through depreciation) subject to a 16% substitute tax.
- Such payment (due by the deadline for the payment of the corporate income taxes) will also allow a reduction of the fiscal period of amortization to 9 years instead of the actual 18 years.

### **VAT – Cash accounting method**

- A new VAT cash accounting method will be introduced for the next three years (starting from 2009).
- This is only an experimental phase, subjected to the European Community authorization and we are still waiting for a decree establishing terms of applicability.
- Under the new regime – which should be limited to very small companies - VAT debts will be due only when VAT payments will be collected.
- In any case, Companies will have to pay VAT within 1 year from the transaction.
- This measure will not be applied to tax payers who adopt the so-called “reverse charge system” and other special VAT regimes.

### **IRAP (regional tax)**

- It is possible to deduct an amount equal to 10% of IRAP paid during 2008 from corporate income tax (IRES) for the companies that have paid interest and personnel expenses during tax period which includes December 31, 2008.
- For the first period, it should be possible to apply such 10% not only to pre-payments related to 2008 IRAP but also to the amount paid in 2008 but related to 2007.

### **Decrease in IRES-IRAP prepayments**

- Prepayments due by IRES subjects (limited liabilities companies) with regard to IRES and IRAP payments for fiscal year as of November 29, 2008 have been decreased by 3 percentage points.
- In case 100% prepayments have already been made at such date (as in most cases), it will be possible to recover the difference through compensation of the amounts in the F24 Forms.

### **Tax credit for Research and Development Activities**

- Companies are allowed a tax credit for their 2008 R&D activity, amounting to 10% of total costs incurred, a percentage raised to 15% if such costs have been incurred with universities or public research centers.
- In order to benefit from such tax credit:
  - ✓ a preliminary request has to be sent to Agenzia delle Entrate;
  - ✓ benefits will be obtained only if sufficient funds will be available.

- Two cases are foreseen:
  - ✓ **7.A – Activities started before November 29, 2008:** the request must be sent necessarily within 30 days from the approval of a specific telematic procedure. After such deadline, a procedure of “tacit consent” will apply after 90 days from the certification of the receipt of the request
  - ✓ **7.B – Activities started on or after November 29, 2008:** the request must be sent necessarily within one year after the approval of the request. Filing the request and sending it via web will allow to book the utilization of the tax credit. Companies will have to use 30% of such credit within the fiscal year when the request has been filed; the rest within the following year.

### **Studi di settore (Sector Studies, applicable to companies whose turnover is lower to 5.164.569 €)**

- Fiscal authorities will be able to revise “studi di settore” or to introduce new ones - beyond the deadlines foreseen by art. 1 co. 1 / DPR 195/99, i.e. after March 31<sup>st</sup> of the year following the reference year - in order to face the effects of present economic crisis as well as market and territorial specificities. Such revisions will be based on national accounting data, acquired from institutes and bodies specialized in economic analyses and illustrated in the reports by the regional Observatories for “studi di settore”.
- No more “presumptive investigations” will be possible for those tax subjects who have already adhered to “presumptive calls” for “studi di settore”, the only condition being that non declared assets emerged from their “presumptive reconstruction” be
  - ✓ Equal or lower than **40% of revenues**;
  - ✓ Nor higher than **50.000 euro**.
- This holds true for “Inviti” issued by Agenzia delle Entrate after 1/1/2009, regarding tax periods which include 31.12.2006 and later tax periods.

### **Entertainment costs**

- The new law gives a definition of entertainment costs which is based on the free provision of goods and services, inherence, promotional and public relationship purposes and reasonableness.
- Please note that VAT charged on these costs is not deductible.
- Entertainment costs are fully deductible in measure equal to:
  - ✓ 1.3% of revenues up to € 10 million;
  - ✓ 0.5% of revenues for the exceeding part between € 10 and 50 million,
  - ✓ 0.1% of revenues for the exceeding part over € 50 million.
- Gifts and other entertainment costs with a unit value lower than € 50 are fully deductible without respect to the above mentioned limit.
- Please note that board and lodging expenses are now deductible for 75% of actual costs.

### **Certified Electronic Mail**

- New companies will be required to provide a certified e-mail address on the registry of companies registration form: a system similar to the standard e-mail procedure, with additional security and certification characteristics regarding data transmission;
- All businesses incorporated as companies will have to communicate their certified e-mail address to the Registry of Companies within three years.
- The same requirement holds true for all professionals registered with official Associations, even though they have to act within one year.
- In the future all communications with Public Administration bodies will take place through such Certified Electronic Mail.

### **Short term investments in securities**

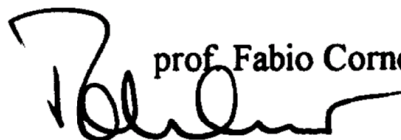
- As a consequence of the financial crisis, companies that do not adopt IAS/IFRS do not have to write down shares and bonds held and can value them to the book value in the last Financial Statement formally approved.

### **Voluntary compliance with tax payments**

- Under Italian tax law, taxpayers who voluntarily settle overdue tax liabilities or file overdue tax returns before receiving a communication from the tax authorities are subject to a reduced penalty regime. The new fiscal law has further reduced the applicable penalties, thereby making it more convenient for tax payers to consider delays in tax settlement.
  - ✓ In case of missed or delayed payment of tax, penalty for payments made within 30 days of the deadline have been reduced from 3,75% to 2,5% of the penalty;
  - ✓ In case of compliance within the term for filing the tax return relating to the period in which the violation was committed (or within one year when no return is required), penalties have been reduced from 6% to 3% of the penalty .
  - ✓ The reductions of the penalties is also applied to the voluntary compliance for violations committed prior to November 29, 2008.

We look forward to hearing from you as soon as possible. Meanwhile, do not hesitate to contact us if you need any further clarification.

Yours sincerely,

  
prof. Fabio Corno