

# *European Tax Newsalert*

A Washington National Tax Services (WNTS)  
Publication

ITALY

December 22, 2011

## *Italy clarifies its NOL regime and introduces a new tax incentive*

Law Decree n. 98/2011, enacted on July 17, 2011 by the Italian parliament, modified the ordinary tax carryforward rules, repealing the five-year carryforward limitation and introducing a utilization cap of 80% for any given fiscal year taxable income. Guidance n. 53/E, issued by the Italian tax authorities on December 6, 2011, clarifies that the new rules also apply to prior year tax losses.

The Italian government introduced Law Decree 201/2011 (the "Decree") on December 6, 2011, creating an incentive (*Allowance for Corporate Equity, or "ACE"*) to stimulate companies' capitalization. Broadly speaking, ACE consists of a notional deduction calculated on *new equity*, i.e., an adjusted equity amount in excess of the equity balance at December 31, 2010.

The Decree also increased the portion of Regional Tax ("IRAP"), usually levied at a rate ranging from 3.9 to 4.82%, that may be deducted from the Italian corporate income tax base. The corporate income tax ("IRES") is a federal tax usually levied at a 27.5% rate on taxable income.

Law Decree 201/2011 is already in force, and was converted into ordinary law by the Italian Parliament today, December 22, 2011.



---

## *Tax loss carryforward*

Under the new rules:

- Tax losses incurred during the first three fiscal years after a company's incorporation ("start-up losses") may be carried forward indefinitely provided they are generated by a new business activity (as was the case before Law Decree n. 98/2011);
- Tax losses other than start-up losses ("ordinary losses") may be brought forward indefinitely as well. However, unlike start-up losses, ordinary losses may only offset 80% of the fiscal year's taxable income. Accordingly, absent start-up losses, a corporation must pay IRES (at 27.5%) on at least 20% of its taxable income (resulting in an effective rate of 5.5%), even if it has sufficient ordinary losses to offset its taxable income.

Guidance n.53/E clarifies that the new rules also apply to ordinary losses incurred prior to the fiscal year in progress at July 6, 2011, and not yet utilized or expired (under the old provisions) at that date.

Companies should consider how this clarification may impact their financial statements, particularly with regards to the recognition of deferred tax assets related to the tax loss carryforwards.

## *Notional yield deduction (ACE)*

The ACE incentive allows a tax deduction from net business income, equal to a notional yield calculated on the *new equity*. The notional yield rate is 3% for tax periods 2011-2013. Thereafter, the Minister of Economy and Finance will decree and publish the notional yield rate by January 31st of each year.

The *new equity* is the statutory equity balance at year end, net of current year profits, in excess of the equity balance at December, 31, 2010.

The equity may be increased by capital contributions in cash, as well as by transferring profits into distributable reserves, and may be decreased by distributions of equity and profit. Importantly, the equity can also be reduced by acquiring shares in controlled companies, businesses or even branches of business.

The notional yield exceeding the taxable income may be carried forward for use in subsequent tax periods.

The ACE applies beginning with the fiscal year in progress at December 31, 2011.

The Italian tax authorities are supposed to release, within 30 days, the specifics of this new incentive.

## *IRAP Tax deduction from the corporate income tax base*

Law Decree 201/2011 also introduced the ability to deduct the IRAP paid on the labor cost from the IRES annual taxable base. The deduction applies beginning with the 2012 tax period.

*For more information, please do not hesitate to contact:*

*Your international tax service team in the U.S.*

*Alessandro Di Stefano    +1 646 471 20909    [alessandro.di.x.stefano@us.pwc.com](mailto:alessandro.di.x.stefano@us.pwc.com)*

*Your international tax service team in Italy*

*Franco Boga                      +39 0291605 400    [franco.boga@it.pwc.com](mailto:franco.boga@it.pwc.com)*

*Alessandro Caridi            +39 02 91605 003    [alessandrocaridi@it.pwc.com](mailto:alessandrocaridi@it.pwc.com)*

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2011 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.