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The “Decreto Energia” reopens the terms for the tax step-up for land and non-listed equity interests

On March 1, 2022, the Law Decree 17/2022 so called “Decreto Energia” was published on the Italian Official Gazette. The Decreto Energia, inter alia, makes possible again the election for a tax step-up of the value - to be certified by a sworn appraisal - of land and equity interests held as at 1 January 2022 against the payment of a substitute tax (“Step-up”).

The special tax regime can be opted by those who hold the relevant asset outside the scope of a business activity, such as:

- Italian tax resident individuals;
- Italian partnerships and non-commercial entities;
- non-Italian tax resident taxpayers.

The Step-up, once perfected, becomes relevant in case a capital gain is realized upon divestment.

Assets that qualify for the Step-up are:

- land;
- equity interests in unlisted Italian companies including equity option, warrant, convertible bonds.

The substitute tax may be either paid:

- in full by 15 June 2022; or
- through up to three yearly installments by the following deadlines:
 1. 15 June 2022;
 2. 15 June 2023;
 3. 15 June 2024.

In case payment is made in installments, a 3% yearly interest rate is applied.

To carry out the Step-up, it is necessary:

- to obtain a sworn appraisal on the asset at 1 January, 2022 that shall be dated no later than 15 June 2022;
- to pay the substitute tax (14%) by filling in the payment form (F24) including specific details (i.e., the fiscal year “2022”, the tax code “8055” for equity interests and “8056” for land);

- to insert the relevant data of the Step-up in the Income tax return for fiscal year 2022.

It is possible to deduct from the substitutive tax due any amount paid for previous step-ups made in relation to the same qualifying assets (art. 7(para 2), Law Decree 13 May 2011, n. 70).

Italian Tax Authorities clarified that after the Step-up, in case the sworn value of the asset (i.e., the stepped-up value) is higher than the sale price, the capital loss is not relevant for tax purposes (Circular letter n. 1/E dated 15 February 2013, para. 4.1).

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