

Tax Pills

Limited deduction of costs originating from operations with black-listed jurisdictions

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The new Budget law contains a provision that limits the deduction of expenses and other negative components arising from transactions carried out with enterprises resident or located in non-cooperative jurisdictions for tax purposes. Such limit corresponds the so-called “*normal value*” of the relevant goods and services traded. Therefore, the new rule states that any cost in excess of the “*normal value*” should be excluded from deductibility.

The conditions for cost deductibility – However, paragraphs 84-86 of the Budget law, admit a full deductibility, also above the “normal value”, but in the presence of two conditions, which must be proven by companies resident in Italy: first of all, the transactions put in place must respond to a real economic interest; to follow, the same transactions must have been carried out concretely. It is important to remember that the rules newly introduced also apply to the provision of services rendered by professionals domiciled in non-cooperative countries or territories for tax purposes.

Cfc regulation remains outside the novelty - Such limitation should not apply to transactions with subsidiaries qualifying under the Italian provision on Controlled Foreign Corporations (CFCs). Provisions on the non-deductibility of costs arising from transactions entered into with enterprises located in non-cooperative countries or territories for tax purposes).

EU obligations – As states by the EU Council and Commission, member States are obliged to select and introduce in domestic legislation at least one of the legislative measures contained in the *Guidelines* to fight non-cooperative jurisdictions on fiscal matters: **non-deductibility of costs arising from transactions with companies located in countries or territories that are not cooperative for tax purposes**; provisions on foreign subsidiaries (CFCs); application of

withholding taxes on outgoing payments and, finally, limitations on the application of the rules of the so-called "participation exemption" on payments made to entities located in non-cooperative countries or territories for tax purposes. Indeed, these defensive measures should have the effect of encouraging the third jurisdictions, included in the list, to align with the principles of good governance taxation. It is within this fiscal scenario, dictated by the European Union, that the paragraphs 84-86 new rules must be read.

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