

The Italian Tax Alert

Tax alert – Italy: possible claims for tax refund on costs incorrectly accrued

21 May 2010

1. Details

The Italian tax authorities can challenge the deduction of costs, inter alia, which are not accrued in the right period.

Costs incurred in year N but accounted and deducted, by mistake, in the following year, are disregarded and lead, in case of a tax audit, to an upward adjustment in year N+1. No corresponding downward adjustment is automatically made by the tax authorities in year N.

In order to get a repayment for year N, based on tax authorities position to date, the recommended practice was:

- to file a new tax return for year N. However, the new tax return had to be filed within the deadline for the filing of the tax return of year N+1; or
- where the above deadline had expired, to submit a claim for repayment within 48 months from the date of payment of the taxes related to year N.

Where neither of the above deadlines could be met, double taxation could not be avoided.

In compliance with recent Italian Supreme Court rulings (e.g., No. 16023 of July 8, 2009 and No. 6331 of March 10, 2008), the tax authorities have now recognized that such double taxation should be avoided, and have changed their practice.

Namely, if the aforementioned options are no longer available, according to the circular letter No. 23 of May 4, 2010, it is now possible to claim refund of overpayments after either any litigation process relating to the tax audit before the Italian tax courts has become final or the tax audit of the Italian tax authorities may no longer be appealed.

The refund has to be claimed within 2 years of this time.

2. Short term actions

Italian Companies should check whether tax assessments made due to non-compliance with the accrual principle have become final and immediately claim refund of any overpaid taxes.

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