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Tax Connect Flash

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Italy: anti-deficit package converted into law with amendments

On May 31, 2010, following the Greek crisis, the Italian government approved the decree No. 78 (hereinafter "the Decree") in order to bring back the Italian budget deficit within the European parameters.

The Decree has been converted by the Law No. 122 of July 30, 2010 with amendments.

We summarize here-below the most important tax measures contained in it. Amendments with respect to the decree No. 78, commented in our alert of June 22, 2010, are highlighted in bold (additions) or by mean of strikethrough (deletions).

VAT transactions worth Euro 3,000 or more (Art. 21)

All VAT transactions worth Euro 3,000 or more shall be communicated to the Italian tax authorities.

The implementation rules shall be set forth by the Italian Revenue Agency.

Tax audit policies (Art. 23 and 24)

Confirming the tax audit policies indicated in the Circular letter No. 20/E of April 16, 2010 (see the Italian Tax Alert of May 10, 2010), the Decree reiterates that the following persons shall be specifically subject to scrutiny by the Italian tax authorities:

- companies closed within one year of activity;
- companies declaring a tax loss for more than one taxable period, if such losses do not stem from directors' fees or compensations paid to share/quota-holders or **if such losses are not covered by mean of capital injection.**

Transfer pricing (Art. 26)

The Italian tax law does not provide for extensive regulations on transfer pricing. In addition, the only comprehensive interpretation on the application of the Italian transfer pricing provisions dates back to 1980. The 1980 ruling and the following ones state that, irrespectively from the wording of the Italian tax code, reference should be made to the OECD Transfer Pricing Guidelines with slight differences.

The Decree now provides that, in case of a transfer pricing assessment, no penalties (ranging from 100% to 200% of the higher tax to be applied on the adjusted prices) will be levied in case the taxpayer both complies with specific documentation requirements and a specific communication is made to the Italian tax authorities.

The documentation requirements and the content and terms of the communication have been set forth by the Italian Revenue Agency on September 29. We will comment on them in the following alert.

VAT anti-avoidance rules (Art. 27)

VAT persons will be obliged, upon incorporation, to communicate to the Italian tax authorities if they intend to perform intra-UE transactions.

The Italian tax authorities may deny, within 30 days from the communication, the authorization to perform such transactions.

Compulsory collection of taxes assessed (Art. 29)

Taxes, penalties and interest resulting from tax assessments notified starting from July 1, 2011, will be due and payable within 60 days from the notification of the tax assessment; if a tax appeal is filed against the assessment, only 50% of taxes, and relevant interest, will be due within the same deadline.

After 30 days from such deadline the collection of the amounts due is entrusted to the collector agent also for the purpose of the compulsory collection procedure.

Ban to offset tax credits in case of unpaid tax debts and possible offsetting between tax debts and credits towards public entities (Art. 31)

Pursuant to Italian tax law, credits arisen with respect to a certain tax (e.g., VAT) can be used to offset debits arisen with respect to the same tax without any limitation (so-called "vertical offsetting of taxes").

Differently, credits arisen with respect to a certain tax (e.g., VAT) can be used to offset debits arisen with respect to another tax (e.g., corporate or local income tax) or debits from social security contributions within the annual limit of Euro 516,456 (so-called "horizontal offsetting of taxes").

The Decree now provides that, starting from January 1, 2011, the horizontal offsetting of taxes is not allowed up to the amount of tax debts due and collectible, exceeding Euro 1,500, resulting from formal requests of payment issued by the tax authorities (usually within a compulsory collection procedure).

Starting from January 1, 2011, credits certain and payable for contracts and supplies towards local tax administrations and the National Health Service may be set-off against taxes due and collectable.

The implementation rules shall be set forth by a special decree.

Real estate investment funds (REIFs) (Art. 32)

Investments funds – including REIFs – shall comply with specific conditions concerning – *inter alia* – their assets, the managing of the same and the relationship with the investors' personal assets.

Management companies (*società di gestione del risparmio* - SGR) of REIFs must amend the REIF's regulations accordingly and pay a 5% substitute tax on the REIF's NAV ~~average~~ **resulting as at December 31, 2009 ~~of the years 2007, 2008 and 2009~~**. The substitute tax shall be paid in 3 instalments: 40% within March 31, 2011; 30% within March 31, 2012; 30% within March 31, 2013.

Should the SGR not amend the regulation, the REIF shall be put into liquidation and a 7% substitute tax shall be paid. **The liquidation must be concluded in 5 years time**. **On the profits realized during the liquidation a 7% substitute tax will be levied. The substitute tax due for each year during the liquidation period shall be paid within February 16th of the following year.**

Application rules will be implemented by a special Decree.

In addition, the Decree **partially** abolishes, **for earnings accrued starting from January 1, 2010**, the withholding tax exemption on distributions made by REIFs to non resident quota-holders ~~that are resident in countries allowing an effective change of information~~. **Exemption from withholding tax still applies if the recipients are: bodies and international institutions created in accordance with international agreements; central banks; pension funds and foreign collective investment vehicles resident in white list countries.**

Additional taxation of stock option and bonus (Art. 33)

Managers of the financial sector receiving bonus and stock options exceeding 3 times of their fixed remuneration will be subject to an additional tax of 10%.

Attractive tax regime for EU investors (Art. 41)

EU companies, starting a **new** business activity in Italy will be free to opt, **for three years** and subject to the filing of a ruling, for one of the tax systems in force in the EU countries as an alternative to the Italian one. The alternative regime will be effective also for the employees of the company engaged in the activity performed in Italy.

Taxes levied by local administrations will not be affected by such option.

The implementation rules shall be set forth by a special decree.

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