

The Italian Tax Alert

Tax alert – Italy: anti-deficit package

22 June 2010

1. Introduction

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

The Decree has not yet been converted into law. Thus, while being into force it might be subject to changes by the Italian Parliament.

We summarize below the most important tax measures contained in it.

2. Details

2.1 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.

2.2 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.

2.3 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 will be set forth by the Italian Revenue Agency.

2.4 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.

2.5 Compulsory collection of taxes assessed (Art. 29)

Taxes, penalties and interest resulting from tax assessments are due and payable within 60 days from the notification of the tax assessment; if a tax appeal is filed, only 50% of taxes, and relevant interest, are due within the same deadline.

2.6 Ban to offset tax credits (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 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 Tax Authorities (usually within a compulsory collection procedure).

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

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

The management companies (*società di gestione del risparmio* - SGR) must amend the REIF's regulations accordingly and pay a 5% substitute tax on the REIF's average NAV 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.

Application rules will be implemented by a special Decree.

In addition, the Decree abolishes the withholding tax exemption on distributions made by REIFs to non resident quota-holders that are resident in countries allowing an effective exchange of information.

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

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

2.9 Attractive tax regime for EU investors (Art. 41)

EU companies starting a business activity in Italy will be free to opt for one of the tax systems in force in the EU countries as an alternative to the Italian one. Such option will be effective also for the employees of the company engaged in the activity

performed in Italy. To this end, the non-resident company must submit to the ITA a request for an advance ruling.

Such measure is not immediately effective and specific application rules will be implemented by a special Decree.

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