

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.

* * *

For additional information with respect to this alert, please contact either of the following:

Name	Fabio Aramini (Partner)	Giovanni B. Cali (Partner)
E-mail	fabio.aramini@cms-aacs.com	giovanni.cali@cms-aacs.com
Office	+3906478151-306	+3906478151-305

CMS aims to be recognised as the best European provider of legal and tax services. Clients say that what makes CMS special is a combination of three things: strong, trusted client relationships, high quality advice and industry specialisation. We combine deep local expertise and the most extensive presence in Europe with cross-border consistency and coordination. CMS operates in 27 jurisdictions, with 53 offices in Western and Central Europe and beyond. CMS was established in 1999 and today comprises nine CMS firms, employing over 2,400 lawyers. CMS is headquartered in Frankfurt, Germany.

CMS member firms are: CMS Adonnino Ascoli & Cavasola Scamoni (Italy); CMS Albiñana & Suárez de Lezo, S.L.P. (Spain); CMS Bureau Francis Lefebvre (France); CMS Cameron McKenna LLP (UK); CMS DeBacker (Belgium); CMS Derks Star Busmann (The Netherlands); CMS von Erlach Henrici Ltd. (Switzerland); CMS Hasche Sigle (Germany) and CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH (Austria).

CMS offices and associated offices: Amsterdam, Berlin, Brussels, London, Madrid, Paris, Rome, Vienna, Zurich, Aberdeen, Algiers, Antwerp, Arnhem, Beijing, Belgrade, Bratislava, Bristol, Bucharest, Budapest, Buenos Aires, Casablanca, Cologne, Dresden, Duesseldorf, Edinburgh, Frankfurt, Hamburg, Kyiv, Leipzig, Ljubljana, Lyon, Marbella, Milan, Montevideo, Moscow, Munich, Prague, São Paulo, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Utrecht, Warsaw and Zagreb.

The members of CMS are in association with The Levant Lawyers (TLL) with offices in Abu Dhabi, Beirut, Dubai and Kuwait City.