

The Italian Tax Alert

Tax alert – Italy: 2010 tax audit policies

10 May 2010

1. Executive summary

The circular letter No. 20/E of April 16, 2010, containing the tax audit policies for the calendar year 2010, illustrates the continuing interest of the Italian tax authorities in international transactions.

Companies should, in particular, review the documentation supporting intercompany cross-border transactions with specific reference to the 2007 and 2008 taxable periods.

2. Introduction

On April 16, 2010, the Italian tax authorities released the circular letter No. 20/E containing the policies for tax assessments to be followed by tax offices in 2010.

We summarize below some of the highlights of the letter.

2.1 Tax audits on large-sized companies

According to the recommendations made by the Italian tax authorities, for large companies, including those taxpayers with a turnover with more than 25 million Euro, the following transactions should be carefully analyzed by tax offices during 2010 tax audits:

- transactions aimed at exploiting international tax arbitrages: e.g., with hybrid instruments or hybrid entities;
- extraordinary and uncommon cross-border re-organizations;
- transfer pricing.

Tax offices should also pay specific attention to significant changes in the taxpayers' taxable income and to the creation of net (tax) operating losses. The authorities believe that such changes might stem from aggressive tax planning schemes by taxpayers aimed at moving their taxable base from one country to another, in the context of the financial crisis.

The circular letter points out the importance of co-operation by the Italian authorities with the tax authorities of other countries.

Finally, the 2010 audit by tax offices should focus on the 2007 and 2008 taxable periods.

2.2 Tax audits on medium-sized companies

According to the circular letter, tax audits on companies with a turnover of 25 million Euro or less should be significantly increased.

Specific attention should be paid to taxpayers with a low or nil taxable income over a number of years, or with a VAT turnover not in line with the type of company or, finally, with a VAT credit position not justified by the type of business.

In addition, the following should attract the attention of the tax offices when selecting companies to be audited:

- transactions with non resident counterparties;
- intra-group transactions;
- VAT credits utilized to offset taxes of a different nature;
- unusually high levels of interest paid;
- unusually high costs for services;
- extraordinary gains or losses;
- significant and uncommon changes in the VAT turnover.

Tax assessments should specifically target taxpayers not audited during the last four years.

During 2010 tax offices should audit the 2007 taxable period. The 2008 taxable period should be audited soon after, once the electronic procedures for the selection of risky taxpayers are available.

3. Short term actions

Companies should carefully review the documentation supporting cross-border intercompany transactions. Ideally, as far as transfer pricing is concerned, a qualitative and quantitative analysis should be available in order to face possible challenges from the Italian tax authorities.

Specific attention should be paid to the 2007 and 2008 taxable periods.

4. How we can help

CMS has a network of international tax specialists that can help you in reviewing, from each side of the deal, the documentation supporting cross-border transactions.

In addition CMS has a litigation department specialized in supporting the defence of tax audits at all levels, including the Italian Supreme Court and the European Court of Justice.

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