Italy

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Italy's year has been characterized by several new laws aimed at better regulating the tax framework for multinational groups and foreign investors and at encouraging R&D activity as well as the use of intangible assets properties.

I. New Framework for Multinational Groups

Italian legislators[1] tasked the Italian Government with defining new, more reasonable, transparent and growth-oriented, tax rules, to enable Italy to finally become more attractive for multinational enterprises intending to operate in the country.

After long analysis and discussions at Parliamentary level, Italian legislators issued Legislative Decree number 147,[2] which includes several interesting tax changes.[3]

First of all, new provisions for the Italian unilateral Advance Pricing Agreement and the bilateral Advance Pricing Agreement have been considered, in order to better legitimate and strengthen the existing rules. Secondly, legislators have given foreign investors the opportunity to obtain more certainty on the tax rules applicable to huge investments in Italy.

Legislators have then regulated the tax effects arising from the transfer of residence from Italy to abroad and vice versa and, finally, they have amended the rules applicable to Italian permanent establishment of foreign parent companies, by adopting the "functionally separate entity" approach and by requesting the preparation of a financial statements.

A. Italian Unilateral APA

Based on the Italian unilateral APA, Italian taxpayers are now entitled to conclude an APA[4] with the central unit of the Italian tax authorities in the following areas:

- transfer pricing;
- definition of the fair market values for the in- and outflow of assets in the case of a transfer of a legal entity residence;
- presence of the requisites that confirm the existence of a permanent establishments in Italy;
- definition of the fair market attribution of profit and losses to a permanent establishment in Italy; and
- application of the rules pertaining to the payment or perception of dividends, interests, royalties and other income to or from non-resident persons.

B. Italian Bilateral and Multilateral Advance Pricing Agreement

The new rule provides the possibility of domestically and retroactively applying the results of a bilateral APA up to the tax period in progress at the time in which the petition was filed by the Italian taxpayer.

C. Ruling on New Investments

Foreign multinational groups intending to invest more than 30 million euros in business activity in Italy may ask the Italian tax authorities for a ruling which will permit them to define all the tax rules applicable to the investment plan and the necessary planned company transactions.

The Italian rules that can be defined include, but are not limited to, the application of:

- General anti-avoidance rules ("GAAR"), as well as specific anti avoidance rules ("SAAR") to specific transactions/operations;
- CFC regime;
- PEX regime on dividends and capital gains; and
- VAT treatment applicable to certain transactions etc.

This ruling is strictly linked to the Unilateral APA procedure.

The foreign investor shall prepare a detailed investment plan which will describe and provide details of the:

- amount of the investment;
- timing and the operative realization of the same;
- employment consequences; and
- quantitative effects from an Italian tax perspective.

The tax authorities have to provide an answer within 120 days to the written request filed by the for-

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