Bernoni Grant Thornton
An instinct for growth™

Tax news

AUGUST 2017

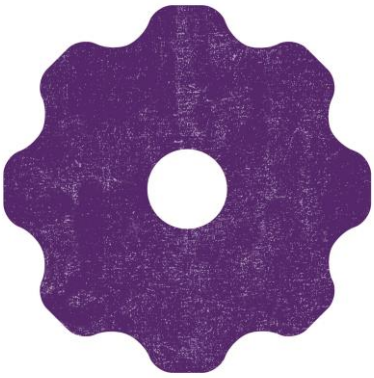
Foreign branch exemption – implementing rules issued

The Italian Tax Authorities issued Protocol No. 2017/165138 of 28 August 2017, providing implementing rules with respect to the foreign branch exemption option introduced by Legislative Decree No. 147 of 14 September 2015.
In particular, resident companies may elect to exempt income derived through foreign permanent establishments.
The choice must be indicated in the tax return related to the fiscal year in which the (first) foreign permanent establishment is formed. For companies with foreign permanent establishments already existing on 7 October 2015, the choice may also be indicated in the tax return related to the second fiscal year following the fiscal year ongoing on that date. The election applies to all of the company's permanent establishments and cannot be revoked. It ceases to apply where all foreign permanent establishments are closed, including by sale or liquidation.
Where the foreign permanent establishment was in an overall tax loss position over a 5-year period before the election, income derived through the permanent establishment will be included in the resident company's taxable income, up to the amount of such pre-existing tax losses actually used to offset the company's taxable income.

This recapture mechanism applies on a per-country basis.
The Italian Tax Authorities provide for specific rules with respect to the application of the recapture mechanism where a company has elected to apply for the domestic tax consolidation regime and in the case of transfer of a permanent establishment to a company of the same group or to a non-resident company.
Income of foreign permanent establishments and their dotation funds are generally calculated according to the Authorized OECD Approach (AOA) and income deriving from internal and intra-group dealings is calculated according to the recently amended article 110(7) of Presidential Decree No. 917 of 22 December 1986.
Where a permanent establishment benefits from a low-tax regime for CFC purposes, the exemption does not apply and income is imputed to the resident company under the CFC rules.

Voluntary disclosure procedure – extension

On 4 August 2017, the Decree of the President of the Council of Ministers of 28 July 2017 was published in Official Gazette No. 181.
Under the Decree, the deadline for submission of the application for initiating the voluntary disclosure procedure, recently amended by Law Decree No. 193 of 22 October 2016 converted, with amendments, by way of Law No. 225 of 1 December 2016, has been extended from 31 July 2017 to 30 September 2017.



The main features of the new voluntary disclosure procedure are summarized below.
The voluntary disclosure procedure has been reopened to allow qualifying taxpayers to regularize their tax positions. In particular, under article 7 of the converted Law Decree, taxpayers residing in Italy and being subject to individual income tax, who, until 30 September 2016 (i.e. until tax year 2015), omitted to report in their income tax return assets and investments held abroad, may commence a voluntary disclosure procedure, unless they already applied for the previous voluntary disclosure programme or they are subject to tax audit or investigation.
In addition, the voluntary disclosure procedure is also available to taxpayers who want to regularize their tax position with respect to tax periods still open to assessment.
Taxpayers must submit an application to the Italian Tax Authorities disclosing all assets and investments held abroad, or any other tax violations and provide for additional accompanying information and documentation by 30 September 2017. ITA published Protocol No. 233984/2016 of 30 December 2016, approving the new form and related instructions to apply for the procedure.
Taxpayers must pay the entire amount of taxes, (reduced) penalties and interest due. They may choose to self-assess and spontaneously pay the amount due (in a single payment or three monthly instalments) or wait for Italian Tax Authorities to calculate it. However, in the case of self-assessment and spontaneous payment, taxpayers will benefit from the maximum available reduction of administrative penalties.
In particular, administrative penalties are generally equal to 75% (85% for taxpayers not opting for the spontaneous payment) of the minimum penalty. However, they may be further reduced up to 50% (60% for taxpayers not opting for the spontaneous payment) of the minimum penalty, if certain conditions are met. Where the value of the undisclosed assets does not exceed EUR 2 million, taxpayers may also opt for a simplified assessment procedure, under which the amount due will be calculated by applying a flat rate of 27% on 5% of the value of the undisclosed assets at the end of the tax year. A special procedure applies for the regularization of cash and bearer securities.
In addition, taxpayers will not be subject to criminal prosecution for fraudulent tax returns, omission or inaccurate filing of tax returns, failure to pay VAT or certified withholding taxes, money laundering and self-money laundering.

Credit for foreign taxes paid by a CFC – resolution published

On 11 August 2017, the Italian Tax Authorities issued Resolution No. 112/E providing clarifications on the right of the parent company to obtain a credit for the taxes paid by its CFC in a foreign country other than its country of residence.
In the case discussed, Beta, a company resident in Hong Kong, was a wholly owned subsidiary of Alpha, a company resident in Italy. The income derived by Beta was subject to the Italian CFC rules. Beta was subject to withholding tax on payments received for consulting services rendered to group entities in Taiwan and Malaysia, and to a third-party company resident in the Philippines. The related withholding tax could not be used as credit against Beta's Hong Kong taxable income.

The question was whether Alfa could claim a credit for the withholding tax withheld at source on the payments received by Beta.
The Italian Tax Authorities clarified that both the tax paid by the CFC in its country of residence and the tax the CFC paid in other countries, to the extent that such tax was actually borne by the CFC, could be claimed as credit by the parent company in Italy. The Resolution is in line with the outcome of the final report on Action 3 of the OECD's Action Plan on BEPS on developing recommendations for the design of CFC rules, as it ensures the elimination of double taxation resulting from the application of CFC rules.

Contacts
Bernoni & Partners

Int. T + 39 02 7600 8751
E info@bgt.it.gt.com

Address: Via Melchiorre Gioia 8, 20124 Milano
Offices: Brescia, Milan, Padua, Rome, Trento, Trieste, Turin

http://www.bgt-grantthornton.it/