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Tax news

March 2017

Effects on the tax group regime after the transfer of shares from a PE to its headquarters.

According to the last provision of the article 117 of the Italian Tax code, introduced by the Decree n. 147/2015, it is possible for an Italian permanent establishment (PE) of a foreign group, acting as a consolidating entity, to involve in the tax consolidation all the group entities resident in Italy, even if they are not directly participated by the PE.
In this respect, the Italian Revenue Agency, with Ruling n. 25 of 2 March 2017, in response to a query submitted by a French banking group, has clarified that in presence of an Italian Consolidated group between an Italian PE, acting as consolidating entity and other group entities, the transfer of shares in Italian subsidiaries from the PE to its headquarters (in France) does not terminate the tax group arrangement between the headquarters and the subsidiaries.
The Ruling therefore provides a clarification regarding the proper application of Article 117 of Income Tax Code. The article was deeply changed by the Decree n.147 of 2015.
Under the provisions in force until 2014, non-resident companies could opt for Italian tax consolidation as consolidating entities only if (i) they were resident in a treaty country, and (ii) had a PE in Italy which assets included shares/quotas in the Italian consolidated subsidiaries.

After the introduction of the Decree n.147, conditions (i) and (ii) were both repealed and therefore, a company resident in an EU/EEA Member State, which carries on a business activity in Italy through a PE, may be the consolidating entity of a tax group with its Italian (controlled) subsidiaries, even if the PE no longer holds shares in the consolidated subsidiaries.
The transfer of shares in consolidated subsidiaries from the Italian PE to the foreign headquarters (i.e. the consolidating entity) does not terminate the tax group regime.
The resolution clarify that even if the consolidation apply before the entry into force of the new article 117, the transfer of a share from a PE to its headquarters shall not prevent the continuity of the consolidated. Finally, the Revenue Agency confirms that there is no need to notify the Tax Authority of the transfer of share because the consolidation is not interrupted.

Implementation of Automatic Exchange of Country-by-Country Reports

On March 8, 2017, Italy's Ministry of Economy and Finance published the Ministerial Decree of February 23, 2017 in the official gazette, which provides additional rules concerning country-by-country (CbC) reporting requirements in Italy, and implements EU Directive 2016/881 (the "Directive") on the mandatory automatic exchange of CbC reports among EU member states.

The Italian Tax Authorities (Agency of Revenue) will provide the CbC report to countries participating in automatic exchange within 15 months after the last day of the group's reportable year (18 months for the first reporting period commencing on or after January 1, 2016). The legal basis for the automatic exchange of CbC reports is the OECD Convention on Mutual Administrative Assistance in Tax Matters, a bilateral tax treaty, or a tax information exchange agreement (TIEA).

CbC Reporting Requirements

On December 30, 2015, Italy introduced CbC reporting requirements via Articles 145 and 146 of Law No. 208, which align with the OECD BEPS Action 13 recommendations.
Taxpayers subject to Italy's CbC reporting rules include:

- Italian parent companies of groups which (1) are required to submit group consolidated financial statements; (2) have realized a consolidated annual turnover in the year prior to the CbC reporting year of at least €750 million; and (3) are not controlled by any other entities.
- Italian-resident companies, controlled by a foreign company, which are required to submit group consolidated financial statements in a country where CbC reporting does not apply, or in a country which does not grant an actual exchange of information of CbC reports.

A CbC report in respect of a reporting fiscal year of the multinational group must be filed within 12 months of the last day of the reporting fiscal year.

CbC Reporting Form

Effective from January 1, 2016, Italian multinational entities will have to submit an annual report to the Agency of Revenue containing, on an aggregate basis, in respect of each jurisdiction in which the group operates some different information as the following information: unrelated-party and related-party revenue, total revenue, profit or loss before income tax, income tax paid, income tax accrued. Must be communicate also the amount of stated capital, the accumulated earnings, the number of employees and the value of tangible assets other than cash or cash equivalents.

Automatic Exchange of CbC Report Information

On January 27, 2016, Italy was among the 31 countries that signed the OECD Multilateral Competent Authority Agreement for the automatic exchange of CbC reports (the "MCAA"). Under the MCAA, signatories may exchange CbC reports with other signatories if they have CbC reporting requirements in place and are a party to the OECD Convention on Mutual Administrative Assistance in Tax Matters.

Among other things, CbC report information will be used to assess high-level transfer pricing and other BEPS-related risks, but not as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional and comparability analysis. The information may be used as a basis for further inquiring into the multinational's transfer pricing arrangements in the course of a tax audit. If an adjustment resulting from further inquiries based on the CbC report leads to undesirable economic outcomes, the tax authorities of the jurisdictions of residence of the affected entities must consult each other in attempting to resolve the case.

Italy's plan: Industria 4.0

The expression "Industria 4.0" is strictly connected to the so-called "fourth industrial revolution." This new revolution is made possible by the availability of sensors and low-cost wireless connections, and is associated with the use more pervasive of data and information, computational technologies and data analysis, new materials, components and fully digitized connected systems (internet of things and machines).
Industria 4.0 Italian Government guideline are:

- Operate in technological neutrality logic;
- Implement horizontal actions avoiding vertical or sector-based one;
- Operate on enabling factors;
- Steer existing instruments to promote technological leap or productivity;
- Coordinate key stakeholders without acting as controller or decision maker.

The following strategic measures have been introduced and will be implemented and improved over the three years 2017-2020:

Hyper-Depreciation and Super-Depreciation scheme

The Hyper-Depreciation's advantage is to increase the amortization rate for investments in 4.0 technologies from 140% to 250%, while that of the Super-Depreciation is the extension of 1 year of the incentive with a flat rate of 140%, for investments, both tangible and intangible, when related to 4.0 technologies. The innovative investments includes advanced manufacturing solutions, additive manufacturing, simulation, industrial internet, cloud, cybersecurity, big data and analytics etc, not only in manufacturing sector, but also in agrifood, bio-based economy and energy efficiency. In order to guarantee a broad diffusion of Hyper and Super Depreciation schemes, the item delivery date is extended to 30.06.2018, however, the order and a minimum of 20% for the deposit must be finalize by 31.12.2017.

Tax credit for research and development and innovative expenditure

The tax credit – to be offset against other taxes – is equal to 50% of the incremental difference between investment in human resources, equipment used, research contracts and technical skills acquired and used in R&D, with the average of similar items incurred in the years 2012-14.
Special rules apply where the R&D investment was made after 2014 as well as for costs partially incurred in the period 2012-14.
The only restrictions are, on the one hand, on the amount of investment - which must not be less than €30K per year - and on the other, the amount of the tax credit, which may not exceed €20M in each tax period.
The credit in question may be of particular interest to corporate groups who plan to or have already opened or acquired branches or subsidiaries that carry out research in Italy, or who want to exploit the results of research carried out by third parties.

Finance in support of Industria 4.0: Venture capital and Startups

A 30% of tax deduction is provided for investments up to €1M in innovative startups and SMEs. For the "sponsor" company it is possible to buy fiscal losses of participated startups. The "Acceleratori d'impresa" program, financing the establishment and the growth of the new companies focused on Industria 4.0 technologies and dedicated investments funds for the industrialization of high-tech ideas and patents, is establish.

Update of the White listed Countries

The Ministerial Decree of 23 March 2017, published in the Official Journal, updates the long list of countries which allow an adequate exchange of information on tax matters with Italy (137 States).
Residents of these Countries will benefit from the non-application of the withholding tax on interest, premium and other gains from bonds and similar securities, public and private.

Countries that now join the list are the Vatican State, which agreement with Italy came into force on 15th October 2016, the Republic of Chile, which agreement that eliminating double taxation with respect to income taxes entered into force last December 20th, 2016 and the Principality of Monaco, whose transparency agreement is in force since February 1st 2017.

The other new Countries, included in the Italian white list due to the implementation of the OECD Convention are Nauru and Niue from October 1st, 2016, Barbados from November 1st, 2016, Andorra, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa and finally Uruguay from December 1st, 2016.

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/

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Clients are encouraged to seek appropriate professional advice.

We will be pleased to discuss with you the particular application of the changes to your own circumstances.
To this end please contact
Alessandro Dragonetti or Gabriele Labombarda at their e-mail address below:
alessandro.dragonetti@bgt.it.gt.com
gabriele.labombarda@bgt.it.gt.com

Some pieces of news herein contained may be material to Advisory Services issues. Clients who are interested in delving into these items are encouraged to contact Stefano Salvadeo, Advisory Services specialist, at the following email address: stefano.salvadeo@bgt.it.gt.com

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