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TAX

NEWSLETTER / 1-15 OCTOBER 2018

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LEGISLATION

1.1

Implementation of article 1(634) to (636) of law No 190 of 23 December 2014 – Notification encouraging the voluntary adjustment of the tax position by VAT taxable persons who reported a different turnover from that disclosed by their customers to the Revenue Agency pursuant to article 21 of decree law No 78 of 31 May 2010 – Revenue Agency Director Enactment No 237975 of 8 October 2018

By this Enactment, the Tax Authorities have made available to specific taxpayers (and VAT taxable persons) the information derived from the comparison between the data reported by such taxpayers and those disclosed by their customers (also VAT taxable persons) showing that the former had failed to report all or part of their turnover¹.

Enactment 237975/2018 is divided into the following paragraphs:

- Elements and information available to the taxpayer;
- How does the Revenue Agency make available the elements and information to the taxpayer?
- How can the taxpayer request information or provide the Revenue Agency with any elements, facts and circumstances not known to them?
- How are the elements and information made available to the taxpayers provided to the Revenue Agency?
- How can the taxpayer remedy errors or omissions and benefit from the reduced penalties applicable to the violations?

¹ Article 1(636) of law 23 December 2014 No 190 (Budget Act 2015) provided that a Revenue Agency Director Enactment would establish how the elements and information referred to in article 1(634) and (635) would be made available to the taxpayer and to the Revenue Police (*Guardia di Finanza*).

GUIDANCE

2.1

Tax ruling pursuant to article 11 of law No 212 of 27 July 2000 – Transfer to Italy (*Impatrio*) of the persons referred to in article 16 of legislative decree No 147 of 14 September 2015 – Work provided abroad pursuant to a secondment agreement – New appointment within the company – Revenue Agency resolution No 76/E of 5 October 2018

In Resolution No 76/E/2018, the Revenue Agency provided clarification on the possible eligibility for the beneficial tax regime for “*impatriates*” pursuant to article 16(2) of legislative decree No 147/2015 of an Italian worker who had been seconded abroad in 2004 and returned to Italy with a new corporate position in September 2015. Circular 17/E/2018 had already clarified that Italian individuals returning to Italy from a secondment abroad were not eligible for the beneficial treatment “*in consideration of the continuity with the individual’s prior working position in Italy*”. In the Resolution at issue, the Revenue Agency specified that, this restrictive position notwithstanding, specific cases could be considered where the return to Italy was justified by other reasons². Consequently, it was argued that in the case at issue the worker qualified for the incentive with effect from 2016, year in which he became a tax resident of Italy pursuant to article 2 of the Italian Income Tax Code.

² For example, where the secondment period has been repeatedly extended and its overall length resulted in a weakening of the employee’s ties to Italy to the benefit of the foreign country.

CASE LAW

3.1

Accertamento parziale – Italian Supreme Court, Tax Division, Order No 25018 of 10 October 2018

By Order No 25018 of 10 October 2018, the Italian Supreme Court clarified that the tax offices may adopt the *accertamento parziale* procedure – which is only a manner of conducting the standard audit procedure for tax and VAT purposes established respectively by Presidential Decree 600/1973 and Presidential Decree 633/1972 and therefore can rely on the inductive method of assessment of taxable income – including if they receive a notice or report (*Processo Verbale di constatazione*) from the Italian Revenue Police (*Guardia di Finanza*) providing elements leading to the assumption that unreported income may exist.

3.2

Non-existent transactions – Deductibility – Italian Supreme Court, Tax Division, order No 25027 of 10 October 2018

By Order No 25027 of 10 October 2018, the Italian Supreme Court clarified that the costs regarding non-existing transactions (not used to directly commit a crime) are deductible for income tax purposes by the purchaser even if he is aware of the fraudulent nature of the underlying transactions, except if the key principles for deductibility are violated (costs must have been actually borne, must be relevant to the business carried out, must have accrued, their existence must be certain and their amount must have been determined or be determinable).

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LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 15 OCTOBER 2018.
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY TAX DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST, AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.
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