

Italy relaxes anti-tax haven provisions

EU enlargement – Malta and Cyprus removed from blacklist

On July 30 (Letter ruling n. 96/E/2004) the Italian Revenue has announced the removal from Cyprus and Malta from Italy's blacklist of low-tax jurisdictions for expense deduction purposes.

On the matter, article 110, para. 10 of the Italian Tax Consolidated Text, ICT provides for the non-deductibility of costs and expenses derived from transactions with companies resident in non-EU states or territories with preferential tax regimes.

The latter have been identified by Ministry Decree of 23 January 2002, including Cyprus, limited to certain transactions and companies, and Malta.

From 1 May 2004, Cyprus and Malta have joined the European Union. Therefore, for transactions concluded thereafter the special rules provided by paragraph 10, article 110 are no longer applicable.

Please bear in mind, however, that Cyprus and Malta are still included in the other blacklist of 21 November 2001 for CFC purposes.

This last issue should be addressed in the light of the provisions of the Parent-Subsidiary Directive (90/435/EEC), when applicable.



Additional tax havens included in white-list for tax exemption purposes

On 31 December 2003 the Italian Tax Authorities have issued Revenue Letter 61/E/2003, which contains significant clarifications on the tax exemption of certain financial income for residents of countries listed on Italy's tax haven blacklist.

Article 41 of Law Decree 269/2003 modified the tax exemption for non-resident investors provided by art. 6 of Legislative Decree 239/1996.

The provision contains the definition of non-resident subjects which may claim tax exemption on certain items of financial income such as, *inter alia*:

- interest on Italian bonds issued by banks and quoted companies;
- Italian Government bonds;
- capital gains on non-listed securities;
- securities lending agreements and REPO transactions;
- guarantee commissions;
- annuities;
- income of Italian Investment Funds dedicated to non-resident investors;
- income deriving from Italian Real Estate Investment Funds (REIFs).

Effective 1 January 2004, the exemption provision has been extended to all countries (regardless of their tax haven status) that provide an adequate exchange of information.

Prior to the amendment, Countries enumerated in the blacklist could not benefit by the exemption, even if they granted adequate exchange of information.

Therefore, until 31 December 2003, only investors resident in "white listed" Countries could benefit by the exemption, whereas at present also residents of the following (previously excluded) blacklisted countries may claim the tax exemption:

- all United Arab Emirates, Philippines, and Singapore residents;
- Republic of Korea resident companies under the Tax Incentives Limitation Law;
- Ecuador resident companies operating in free-trade zones;
- Malta resident companies deriving foreign-source income;
- Mauritius resident-certified companies whose activities consist of exporting services, tourist management, and industrial construction,

as well as to companies that are subject to a reduced corporate tax rate, offshore companies, and international companies.



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