

New advance tax ruling procedure for international activities

On July 23rd, 2004, Italian tax authorities have implemented the official procedure enacting the international advance tax ruling provisions introduced by article 8 of Law Decree n. 269 of September 30, 2003.

Companies engaged in International Activities

The new international ruling procedure is restricted only to companies carrying on an international activity. The Revenue document defines the concept of companies engaged in international activity as any company resident in Italy for corporate income tax purposes, meeting one or more of the following conditions:

- it is subject to one or more conditions set out by article 110, para. 7, of the Italian Tax Consolidated Text (ICT) (transfer pricing rules);
- it owns shares of a non-resident company (or is owned by a non-resident company);
- pays to or receives from non-residents dividends, interest, or royalty payments.

In addition, any nonresident company carrying out a business activity through a permanent establishment in Italy is always deemed to be engaged in international activity.

Procedure

Ruling requests must be filed with two dedicated offices of the Italian Revenue:

- Milan for the northern and (some) central regions of Italy, and
- Rome for the southern and (other) central regions of Italy.

The ruling request must report:

- the name and legal seat (or domicile, if different from the legal seat) of the taxpayer;
- the taxpayer's tax identification number (*codice fiscale*);
- the address of the PE or of the tax representative (*rappresentante fiscale*), if filed by a non-resident taxpayer;
- documentation that proves the eligibility requirements, as defined above;
- the signatures of the legal representatives; and
- the scope of application and the purpose of the ruling request.

As to the last requirement, art. 8 of Law Decree n. 269 provides for the following scopes of application:

- advance rulings on the computation methods for transfer pricing issues;
- concrete application of ICT or treaty provisions concerning dividend distributions and interest or royalties payments to or from non-residents;
- concrete application of ICT or treaty provisions concerning the distribution or receipt of other categories of income to or from non-residents; and
- concrete application of ICT or treaty provisions concerning the attribution of profits and losses to a resident company's foreign PE, or to a non-resident's PE in Italy.

Within 30 days after the filing of the request, the Revenue must notify the taxpayer of the incompleteness of the documentation provided in order to provide supplemental evidence, if any.

After that, the Revenue may notify the taxpayer to appear before tax inspectors to verify the accuracy of the information provided, and to define terms and conditions of the negotiation proceeding to be followed between the taxpayer itself and the Revenue. During the proceeding, tax inspectors may be authorized to carry on an inspection of the taxpayer's business activities.

The international advance ruling procedure must be completed within 180 days from the filing of the request.

Where co-operation by foreign tax authorities is requested in the case at issue, the 180-day term is suspended until the international co-operation procedure is completed.

Ruling

The international ruling is the result of the above procedure and takes the form of an agreement between the taxpayer and the revenue on the determination of transfer pricing methodology and of concrete criteria as to the application of Italian and treaty tax provisions.

The agreement has a three-year validity, namely for the fiscal year in which it is reached and for the two following fiscal years.

In addition, the agreement may be asked for renewal 90 days before the deadline. The revenue must give its consent or rejection at least 15 days before the deadline for the agreement expiration.

The Revenue document also deals with violations of the international advance tax ruling agreement. In this case, the taxpayer will be notified of the infringement procedure and will be required to submit documentation in its defence within 30 days. The agreement may be terminated by tax authorities, if the taxpayer does not comply, or the documents submitted are deemed not to justify the taxpayer's business conduct.



For any further information please contact:

Alfredo Fossati (Milan)

afossati@fantozzieassociati.it

Guido Arie Petraroli (Milan)

gpetraroli@fantozzieassociati.it

Giovanni Barbagelata (Milan)

gbarbagelata@fantozzieassociati.it