3rd Annual STEP Pacific Rim Conference
May 6 & 7, 2010
Hotel Casa del Mar, Santa Monica, CA

# Italy's Offshore Tax Amnesty and International Tax Enforcement

Law Decree n. 78 of July 1, 2009

Effective Date: September 15, 2009

Original deadline: December 15, 2009

Final Expiration Date: April 30, 2010

# Background: Obligation to Report Foreign Investments

- Foreign investments must be reported by individual taxpayers on their annual income tax return (Form RW).
- Investments subject to reporting include bank accounts, financial instruments (stock, bonds, insurance policies) or any other financial arrangements with a foreign counterpart (loans, notes, derivative contracts, etc.), real estate, yachts, jewelry, paintings, gold, or any other foreign asset of value exceeding euro 10,000 through which taxpayer can earn foreign-source income subject to tax in Italy.
- Form RW includes three sections:
  - Section I: transfers outside of Italy that are not carried out through an authorized intermediary (e.g. a licensed bank);
  - Section II: value of foreign investments (as defined above) as existing at year end;
  - Section III: transfers (from Italy, into Italy or foreign-to-foreign) that relate to foreign investments subject to reporting (as defined above).
- Penalties: from 5% to 25% of amount that should have been reported.
- Penalties for failing to report on either sections of Form RW are assessed separately.
- Foreign investments reporting penalties are separate from tax penalties for non-reporting income and failure to pay taxes due.

# Voluntary Compliance Program

- Previous programs enacted in 2001 and 2002 (so called "tax shield").
- Qualifying taxpayers: individuals who are resident in Italy for tax purposes and own unreported foreign investments as of December 31, 2008. Ownership of foreign investments includes indirect ownership through agents or nominees, artificial entities, revocable trusts.
- Scope: financial investments subject to reporting.
- Compliance procedure: repatriation or regularization.
- Repatriation is required in case of investments held in black-listed jurisdictions and requires the physical transfer of the assets into Italy.
- For certain assets (e.g. real estate), repatriation can be carried out through the contribution of the property to a company organized in the same foreign country and the transfer of the company's stock to Italy (through the deposit of company's stock certificate with an Italian bank).
- Regularization is permitted in case of investments held in countries that have tax exchange of information programs with Italy and allows taxpayers to keep the assets abroad.
- The original deadline was December 15, 2009. It was extended to April 30, 2010 with an increase in the substituted tax rates due.

# Procedure, Substituted Tax and Tax Audit Protection

- An Italian authorized financial intermediary (bank or other licensed financial institution) collects and pays the tax due and receives and acknowledges the "reserved declaration" from the taxpayer proving that the compliance procedure has been carried out.
- The reserved declaration is filled out and signed by the taxpayer on an approved form and delivered to the financial intermediary. It includes all information that should have been reported on Form RW.
- The reserved declaration remains private and confidential and it is not filed with the tax administration.
- Financial intermediaries file an annual return in which they report the total amount of assets repatriated or regularized under the compliance program.
- Financial intermediaries must conduct all anti-money laundering checks and must a report a case if they know or have reason to know that the foreign investments are the result of a crime (other that tax evasion or non-reporting of income).
- In lieu of all taxes due on unreported foreign investments and income, taxpayers must pay a substituted tax at the rates of 5% (within 12/15/09), 6% (within 2/12/2010) and 7% (within 4/30/2010).
- Taxpayers are not subject to audits or tax assessments in connection with their investments that have been repatriated or regularized under the program, up to the amount shown of the reserved declaration.

# Outcome

- 100 billion euro repatriated or regularized within the original deadline (December 15).
- 30 billion euro expected through the end of the program (April 30).
- Switzerland 60 billion, Luxembourg 7, Austria 1.2, San Marino 3.8, other countries 21.
- Foreign investments still abroad (and not declared): 183 billion.

# International Tax Enforcement

- International tax enforcement provisions:
  - Penalties for failure to report foreign investments increased to minimum 10% (from 5%) and maximum 50% (from 25%) of value of unreported investments;
  - Penalties for failure to pay taxes on income from unreported foreign investments increased to minimum 240% and maximum 480% of tax due;
  - Statute of limitation for assessment of taxes on unreported foreign income increased to 9 years;
  - Foreign investments presumed to derive from unreported income with automatic assessment of taxes and penalties at the highest rate (burden of proof on source of assets, reporting of income and payment of taxes upon taxpayer);
  - Italian citizens expatriated to black-listed countries are presumed to be resident in Italy (burden of proof of actual domicile and residency in the foreign country upon taxpayer).
- Special investigations on Italian branches of Swiss and Austrian banks and Swiss branches of Italian banks.
- 16,000 notices sent to Italian individuals who repatriated in Italy after living abroad in the last 10 years.
- 6,000 notices sent to Italian taxpayers owning real estate in France and UK;
- List of 10,000 names of account holders of HSBC Swiss branch.
- Special program to identify 183 billion of still unreported foreign investments.
- Prominent cases: Valentino Rossi (settled for 35 million euro in taxes and penalties for the years 2001-2006).

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