VECO TAX News

Periodic update report published by Veco Group SA

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ITALY
Budget Law for 2013

On 15 January 2013 the Law n. 228 of 24 December 2012 (the so-called Budget Law for 2013) was published in the Official Gazette.

The main tax measures include the following.

Amendments to the tax on foreign property

The application of IVIE (tax on the value of foreign property held by Italian-resident individuals) was postponed from the fiscal year 2011 to the financial year 2012 (for a more detailed analysis, please refer to Veco Tax News n. 1/2012). Payments already made for IVIE purposes for 2011 will be considered as advance payments for 2012.

Moreover, the Budget Law has amended other aspects of IVIE.

As a general rule, IVIE is calculated by applying the 0,76% rate on the value of foreign property, which is determined according different criteria depending on the country where the property is located (cadastral value for property situated in the UE or EEA countries, purchase cost or market value for properties situated in other countries).

In this regard, the Budget Law has introduced the application of a reduced rate of 0,4% for the property used as first place of residence (“*prima casa*”) and its pertinences. A deduction of Euro 200 is granted from the tax due on the *prima casa* up to amount of the same tax.

In addition, the Budget Law provides that the *prima casa* as well as other foreign property at the disposal of the taxpayer and not leased are exempt from the personal income tax (IRPEF).

Amendments to the tax on foreign financial assets

In the same way as for IVIE, the application of the tax on foreign financial assets (IVAFE) was postponed to the financial year 2012. Payments already made for IVAFE purposes for the financial year 2011 will be considered as advance payments for 2012.

IVAFE is applied at the rate of 0,1% for 2012, and 0,15% from 2013 onwards; the tax base is equal to (i) the market value in the case of listed financial activities, and (ii) the nominal value or the reimbursement value in the case of other financial activities.

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In the first version of IVAFE, as introduced by the D.L. n. 201/2011, the tax was levied at the fixed rate of Euro 34.20 on bank and saving accounts held in EU Member States or States of the European Economic Area allowing an adequate exchange of information; in the other cases, the tax was levied at the proportional rate.
The Budget Law has eliminated this distortion by broadening the application of the fixed rate to the bank and savings account regardless of the country where they are held. In any case, the tax is not levied if the average annual stock, as results from bank statements, does not exceed Euro 5,000.

Step-up of the tax value of shareholdings and land

The Budget Law has re-introduced the possibility to elect for the step-up of the tax base of shareholdings and land.
The step-up allows to align the assets tax base to the fair market value, as determined by a sworn appraisal; therefore, it is possible to reduce, up to zero, the capital gain arising from the sale or, more generally, from any act of disposal of such assets.
The main aspects of the step-up regime are the following:
a) persons entitled to the step-up. The election for the step-up can be made by individuals and any other persons that can realize capital gains taxable in Italy under article 67 of the Italian Tax Code;
b) eligible assets. The step-up is available for shareholdings as well as land held at the date of 1 January 2013. Land includes both building sites and agricultural land. As for the shareholdings, the step-up is limited to unlisted shareholdings, either substantial or non-substantial;
c) substitute tax. The value determined by the sworn appraisal is subject to a substitute tax that is levied at the rate of 4% for land and substantial shareholdings, and at the rate of 2% for non-substantial shareholdings.
The substitute tax can be paid in a single instalment by 30 June 2013, or alternatively, in three annual instalments with the first payment due by 30 June 2013;
d) sworn appraisal. The value subject to the substitute tax is determined by a sworn appraisal that has to be drafted by 30 June 2013. The appraisal estimates the value of the assets at the date of 1 January 2013.
As for the shareholdings, in the case where the taxpayer has to declare capital gains in the tax return, according to the Italian Tax Authorities the appraisal can be drafted even after the sale of the shareholdings.
In the case where taxes on capital gains are levied by financial intermediaries, the appraisal has to be drafted before the sale of shareholding; as a matter of fact, in order to benefit from the step-up, it is necessary to submit the sworn appraisal to the financial intermediary.
As for the land, the sworn appraisal has to be drafted before the sale of land.

ITALY/HONG KONG

Tax Treaty between Italy and Hong Kong signed

On 14 January 2013 the Tax Treaty between Italy and Hong Kong was signed.
Highlights of the Treaty include the following:
a) dividends, interest and royalties. The withholding tax is levied at the rate of 10% on dividends, 12,5% on interest and 15% on royalties;
b) capital gains. Capital gains arising from the alienation of shares of a company deriving more than 50% of its value, directly or indirectly, from immovable property situated in a Contracting State may be taxed in that State. However, this rule does not apply to gains arising from the alienation of shares listed on a stock exchange of either Contracting State or any other stock exchange as may be agreed between the competent authorities of the Contracting States;
c) elimination of double taxation. Both Italy and Hong Kong apply the tax credit method;
d) anti-avoidance rules. Article 27 provides that the Treaty does not prejudice the application of domestic laws to prevent fiscal evasion and tax avoidance;

e) exchange of information.
Article 25 on exchange of information follows the OECD standards. First of all, the article allows the Contracting States to exchange such information as is foreseeably relevant for carrying out the provisions of the Treaty or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes covered by the Treaty. The exchange of information is not restricted to the persons resident in either Contracting States.
Moreover, article 25 provides that the requested State cannot decline to supply information solely because such information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity.
In addition, the requested State cannot refuse to use its information gathering measures solely because it has no domestic interest in such information.
The information exchanged cannot be disclosed to any third jurisdiction for any purpose without the prior consent of the competent authority of the Contracting Party providing the information.
In the case where Hong Kong signs with a third jurisdiction, which is a member of "*the Global Forum on Transparency and Exchange of Information for Tax Purposes*", an agreement allowing the exchange information on taxes other than those covered by the agreement, then Hong Kong will pursue with expedition a negotiation with Italy aiming to extend the scope of Article 25 to such other taxes.

ITALY/CAYMAN ISLANDS

Agreement on exchange of information

On 7 December 2012 Italy and the Cayman Islands signed an Agreement on exchange of information on tax matters.
The Agreement, which is composed by 13 articles, follows the OECD standards.
Under article 1, the Contracting States are committed to provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws concerning the taxes covered by the Agreement. Article 2 lists the following taxes for Italy:
a) the corporate income tax (IRES);
b) the personal income tax (IRPEF);
c) the regional tax on productive activities (IRAP);
d) the value added tax (IVA);
e) the inheritance and gift tax;
f) the substitute tax.
The information, which may be exchanged, includes the information that is foreseeably relevant to the determination, assessment and collection of the above taxes, the recovery and enforcement of tax claims, the investigation and prosecution of tax matters.
The information is exchanged upon request. Article 5 clarifies that the information shall be exchanged without having regard to whether the conduct being investigated would constitute a crime under the law of the requested State.
Under the Agreement the Contracting States are committed to use all the relevant administrative and judicial measures which enable to obtain the requested information.
In this regard, article 5 specifies that the competent authorities of each Contracting State shall have the power to obtain and provide the following information:
a) information held by banks, other financial institutions and any person acting in agency or fiduciary capacity including nominees and trustees;
b) information regarding the ownership of companies, partnerships, trusts, foundations, and any other persons in an ownership chain;
c) in the case of trusts, information on settlors, trustees and beneficiaries; d) in the case of foundations, information on founders, members of the foundation council and beneficiaries.
The Agreement does not create an obligation to obtain and provide ownership information with respect to publicly traded companies or public collective investment funds unless such information can be obtained without giving rise to disproportionate difficulties.
Article 6 states that a Contracting State may allow representatives of the

competent authority of the other Contracting State to enter its territory in order to attend the interview of individuals and examinations of records with the written consent of the persons concerned. Moreover, a Contracting State may allow representatives of the competent authorities of the other Contracting State to attend the appropriate part of a tax examination.

The request of assistance may be declined in the case of:

a) information which could disclose any trade, business, industrial, commercial or professional secret. This rule does not apply to information contained in article 5 (ownership information);

b) information contrary to public order;

c) information that the requesting party would not be entitled to obtain under its own tax laws.

The Agreement shall enter into force upon exchange of the ratification means. Upon entry into force, it shall have effect:

a) for criminal tax matters, on that date;

b) for all the other tax matters, on that date, but only in respect of taxable periods beginning on or after that date.

SINGAPORE

Guidelines on the exemption applicable to capital gains on shareholdings

On 30 May 2012 the Tax Authorities of Singapore provided some guidelines, via an e-tax guide, which explains the tax exemption regime applicable to capital gains on shareholdings and introduced by the Budget Law for 2012.

As a general rule, capital gains arising from the disposal of shareholdings are not subject to tax in Singapore unless they can be characterised as income for tax purposes.

The determination of whether a capital gain is income for tax purposes is based on a consideration of all the facts and circumstances of each case, such as the length of period of ownership, the frequency of similar transactions, the reasons for the disposal and the means of financing the acquisition of the shares.

In order to provide a clearer juridical framework, the Budget Law has introduced the rule whereby capital gains are exempt from taxation in the case where the divesting company has held at least 20% of the shares of the investee company for a continuous period of at least 24 months. In this case, it is not necessary to investigate the nature of capital gain as the exemption is granted automatically.

The guidelines clarify that the tax exemption regime is applicable regardless of the tax residence of the investee company, and regardless of the fact that such company is listed or non-listed.

The tax regime is not applicable when:

a) the shares disposed are other than the ordinary ones;

b) the investee company is in the business of trading and holding immoveable properties in Singapore (other than the business of property development).

As a result, the two above cases fall within the general rule that requires to ascertain the nature of capital gain.

From a procedural standpoint, the divesting company, which meets the conditions for the exemption, has to fill in the requested information in the income tax return relating to the year when the disposal has occurred. Moreover, the company has to keep the relevant documentation, supporting the application of the tax exemption regime, and to show it, upon request, to the Tax Authorities.

The exemption regime applies to the disposal of shareholdings made during the period since 1 June 2012 to 31 May 2017 and it will be reviewed at the end of five years.