Italian Revenue Agency ruling on the taxation of distributions by an Anstalt

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The following document takes a brief look at Tax Ruling no. 433, in which the Italian Revenue Agency comments on the IRPEF treatment of distributions made by an Anstalt in Lichtenstein to an individual resident in Italy.

The background on Anstalts

An Anstalt is a legal entity regulated by the laws of Liechtenstein. It is authorized to conduct business and, among other things, is used to hold and manage assets.

Typically, to set up an Anstalt a minimum capital contribution of CHF30,000 is required. Since the capital is not divided into shares, an Anstalt has no members or shareholders but only one or more holders of rights.

An Anstalt is largely free to draw up its articles as it wishes. It is administered by a management board; however, an important role can also be played by its founders, who remain anonymous and whose rights can be transferred to third parties.

Tax Ruling no. 433

The applicant, an individual resident in Italy, asked the Revenue Agency to clarify how the distributions that they were about to receive from a Liechtenstein Anstalt would be taxed.

Specifically, the Anstalt's management board had resolved to distribute to the beneficiaries (including the applicant) dividends from four foreign companies in which the Anstalt had invested.

The Revenue Agency did not agree with the applicant's approach, which was to treat the Anstalt as a discretionary trust for tax purposes, and ruled that it was equivalent to an Italian partnership (*società semplice*)[1].

(1) The Revenue Agency also noted that, although an Anstalt does not correspond to any type of legal entity regulated by Italian law, it can still be recognized in Italy, as can be deduced from Supreme Court judgments no. 1853/1993 and no. 14870/2000.

The decision reached by the Revenue Agency, which decided that the method to be used in defining the Anstalt for tax purposes was that described in Circular no. 27/E/2015, was based on:

— the fact that, in the voluntary disclosure program[2], the particular Anstalt in question had not been considered as an interposed party;

— the fact that, through the resolutions taken by the Anstalt's assembly, it was always possible, with the consent of all the beneficiaries, for the holders of founder's rights to exercise power and control over the assets, with the result that the beneficiaries and the holders of founder's rights were effectively the same person;

— the fact that in the Agreement on the Exchange of Tax Information between Italy and Liechtenstein[3], an Anstalt is mentioned as a legal entity/arrangement other than a trust.

The Revenue Agency's treatment of the Anstalt as a partnership meant that it treated:

— the Anstalt as a non-resident entity subject to IRES[4];

— the Anstalt's distributions to the applicant as capital income and, more specifically, as foreign profits[5][6].

(2) Governed by Law no. 186/2014.

(3) The agreement ratified by article 5(4) of Law no. 210/2016.

(4) As per article 73(1)(d) IITC.

(5) As per article 44(1)(e) and (2)(a) IITC.

(6) Income received from 1 January 2018, outside the context of a business activity, is subject to 26 percent tax, irrespective of the size of the investment. However, a different regime (the 'transitional regime' governed by article 1[1006] of Law no. 205/2017) applies, in the case of 'qualifying shares', to distributions approved by 31 December 2022 and made out of profits generated in the fiscal year in progress on 31 December 2017. In such cases, a proportion of the profits is included in the recipient's IRPEF base (40 percent, 49.72 percent or 58.14 percent, depending on the fiscal year in which the profits accrued), unless the dividends are distributed by a company located in a tax haven.

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