KPMG

Italy: New percentages of taxable capital gains

Tax Alert

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The Ministry of Economics and Finance Decree of 26 May 2017(1) (the 'Decree') defines the new percentage of capital gains and losses realized by non-resident taxpayers from the transfer of 'qualifying' shares in Italian companies and included in the taxable income of the seller for Italian corporate income tax (IRES) purposes. This percentage rises to 58.14 (from 49.72) and applies to capital gains and losses realized since 1 January 2018.

This higher taxation of the shareholder is designed to offset the decrease in the IRES rate - from 27.5 to 24 percent since fiscal year 2017 - for the investee company.

The context

Looking at the case of a non-resident company with no permanent establishment in Italy, capital gains on the transfer, by that non-resident company, of shares in Italian companies are taxable in Italy, even if the shares are not held through an Italian bank.

An exception is made (i.e. gains are not taxable in Italy) when the resident company is listed and the amount of shares sold during a 12-month period does not represent more than two percent of the voting rights or five percent of the stated capital ('non-qualifying' listed shares).

If the resident company is not listed and the shares sold during a 12-month period do not represent more than 20 percent of the voting rights or 25 percent of the stated capital ('non-qualifying' non-listed shares), the capital gains are subject to a 26 percent final substitute tax; however, residents of foreign white-list countries(2) are exempt.

(1) The Decree was published in Official Gazette no. 160 of 11 July 2017.

(2) For a definition of white-list countries, see our Tax Alert of 21 April 2017.

Until fiscal year 2017, if shares were ‘qualifying’ (i.e. represented more than 20 percent of the voting rights or 25 percent of the stated capital of a resident non-listed company or more than two percent of the voting rights or five percent of the stated capital of a resident listed company), only 49.72 percent of the capital gain was included in taxable income and taxed at the general 27.5 percent IRES rate (50.28 percent was exempt). The same percentage of any capital loss was deductible.

The Decree now raises this percentage to 58.14 (41.86 percent is exempt) for capital gains or losses realized since 1 January 2018.

The Decree does not amend the tax regime for capital gains from the transfer of ‘non-qualifying’ shares, which are still subject to a 26 percent substitute tax or, when the seller is a resident of a white-list country, exempt.

In any case, if a double tax treaty applies, capital gains are usually taxable only in the seller’s country of residence and therefore are not subject to tax in Italy.

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