Italy: Draft Budget Law 2018 - Registration tax - Rethinking anti-avoidance

Tax Alert

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The draft Budget Law 2018 (expected to be approved by the end of this year) includes an amendment aimed at deterring the Italian tax authorities from challenging contributions or legal demergers of a business, followed by a disposal of shares.

Current regime

When an asset deal is structured through the hiving-off of a target business into a NewCo in exchange for shares in the NewCo (or by demerging a business and allocating shares in the transferee to the owner of the demerged company), followed by the sale of those shares, there is no CIT charge as the two-step transaction is tax neutral by law. The same should be the case for registration tax since both steps are substantially exempt (a €200 registration tax is due on each). Over the last few years, however, the Italian tax authorities have been looking at two-step transactions, treating them as straight sales of assets for a consideration, subject to registration tax of 0.5%, 3%, or 9%, depending on the type of asset. They have done so by stretching the anti-avoidance rule contained in article 20 of the Registration Tax Act (the 'IRTC') and arguing that it allows deeds to be defined by the economic purposes they achieve and by their combination with other deeds executed immediately before and after. Although this interpretation has been upheld by several Supreme Court judgments, it has attracted severe criticism from practitioners and academics.

Proposed regime

The proposed amendments to article 20 IRTC would force tax offices to apply registration tax on each deed separately. However, the general anti-avoidance rule (article 10-*bis* of the Taxpayers' Charter) would apply.

The proposed amendments to article 20 IRTC, favorable to taxpayers, should be effective from 1 January 2018, although there is still debate about whether and to what extent the new rule could apply retrospectively.

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