

Italy Implements EU Savings Tax Directive

by Marco Rossi

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Italy has implemented the EU savings tax directive (2003/48/EC) by way of Legislative Decree 84, published in the official gazette on May 23. The ultimate aim of the directive is to make sure that savings income (income earned by individuals in the form of interest or gains from bonds, debentures, or other debt obligations, also known as the "interest payment" for purposes of the directive) is subjected to effective taxation in the beneficial owner's country of residence.

For that purpose, the directive provides for an automatic exchange of information system under which any economic operator or other entity established in an EU member state (the paying agent) that makes an interest payment to or secures an interest payment for an individual who is the final recipient of the income and is resident in another EU member state must report to the competent authority of the country in which the payment is made or secured specific information about the final beneficiary of the payment (the beneficial owner). That information then must be furnished to the competent authority of the beneficial owner's state of residence, where the tax on the interest payment is ultimately expected to be levied.

If the exchange of information system does not apply, as in the case of Austria, Belgium, and Luxembourg (for a transitional period defined in the directive), a backup withholding tax must be collected at source at the time of the payment to the beneficial owner.

The application of the directive turns on the meaning of the terms "beneficial owner," "paying agent," and "interest payment." Because the directive applies to interest payments made or secured by a paying agent established in a member state for the

benefit of a beneficial owner who is a resident in another member state, the terms "established" and "resident" also play an important role in defining the exact scope of the directive.

Beneficial Owner

The term beneficial owner, as defined in articles 1 and 4 of the decree, is substantially in accordance with the definition in article 2 of the directive. Under the directive, a beneficial owner is any individual receiving (actually or constructively) an interest payment for his own benefit. Under the decree, a beneficial owner is the final beneficiary of the interest payment. A beneficial owner does not include a legal person or entity that is taxed on the interest income as part of its business income, or a person receiving the payment as an agent for, or for the benefit of, or in the interest of, another person. If the beneficial owner cannot be identified, the individual receiving the interest payment shall be treated as the beneficial owner.

Paying Agent

According to article 1 of the decree, paying agents include:

- banks;
- securities intermediation companies (*società di intermediazione mobiliare*);
- Poste Italiane S.p.A. (the government-owned postal service);
- financing companies (*società finanziarie*);
- savings managing companies (*società di gestione del risparmio*); and

- fiduciary companies, resident in Italy, that make or secure an interest payment for the immediate benefit of an individual who is the beneficial owner of the payment and is resident in another EU member state.

Under the residual entity rule, the term “paying agent” also includes any other persons, including individuals, who for professional or commercial reasons make or secure an interest payment as defined above.

The Italian rules do not define resident with respect to the paying agent. Presumably, the domestic rules establishing residence in Italy for tax purposes will apply. The directive refers to paying agents established in an EU member state, but does not define the exact meaning of established.

Interest Payment

Article 2 defines interest payment in accordance with the definition in article 6 of the directive. However, in the case of gains realized from the sale, refund, or redemption of shares or units in collective investment funds that invest more than 40 percent of their assets in debt claims or debt instruments, it provides that the entire gain — and not just the portion that is directly or indirectly derived from interest earned by the fund — is included in the definition of interest payment. Article 5 of the decree, which deals with the information that must be provided by the paying agent regarding the interest payment, sets out (albeit indirectly) a parallel rule for income distributed by collective investment funds or gains realized from the sale, refund, or redemption of debt obligations, by providing that the paying agent must report the entire amount of the distribution or gain, and not just the portion attributable to the interest income of the fund.

Residency

The operative rules of the decree implementing the directive apply to interest payments made or

secured by paying agents resident in Italy for the benefit of beneficial owners who are individuals resident in another EU member state. Residency for that purpose is defined as the country in which the beneficial owner has his permanent address, and will be established on the basis of:

- the address appearing on the passport, identity card, or other official documentary proof of identity presented by the beneficial owner;
- a certificate of tax residency issued by the third (non-EU) country of which the beneficial owner who presented a passport or other official identity document issued by a member state claims to be a resident; or
- the member state that issued the passport or other official identity document presented by the beneficial owner, if the beneficial owner claims to be resident of a third country but fails to provide a tax residence certificate issued by that country.

Foreign Tax Credit

To prevent any double taxation that may result from the imposition of the withholding tax referred to in article 11 of the directive, Italy grants to beneficial owners of any interest payment that has been subject to such a withholding tax a foreign tax credit in an amount equal to that of the foreign withholding tax, without limitation. The credit can be used to offset the beneficial owner's other, unrelated tax liabilities or (if it exceeds those liabilities) can be reclaimed as a refund. That is a major departure from Italy's general rules on the foreign tax credit, which limit the credit to the amount of the Italian tax on the foreign-source taxable income. The refund is subject to the statutory 48-month statute of limitation period. ◆

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