

Italy Passes New Law Targeting Abusive Transactions

by Marco Rossi

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The Italian Parliament on April 9 approved Decree 5 of 2009 (enacted on February 11), which targets the tax abuse of sale and repurchase agreements (commonly referred to as repos) and securities lending transactions.

Under a new provision of article 2, paragraph 2 of Legislative Decree 461 of November 21, 1997, regarding sale and repurchase agreements or securities lending transactions or any other arrangements with the same or equivalent economic effects the repo buyer or borrower is entitled to a tax benefit, such as a credit for withholding taxes or foreign taxes or other similar benefits concerning the securities transferred or loaned, only if the repo seller, lender, or beneficial owner of

the securities would be eligible for those tax benefits had it retained the legal ownership of the securities.

A similar provision denies the repo buyer or securities borrower the participation exemption for dividends paid on the securities transferred or loaned unless the repo seller or lender would be entitled to it. Also, Tax Code article 109, paragraph 3-*bis* provides that a loss from sale of stock is nondeductible to the extent of the amount of dividends paid on the stock during the 36 months preceding the sale.

The new law establishes that transactions entered into before the enactment of the new provisions can still be challenged under the general antiabuse rules of article 37-*bis* of Presidential Decree 600 of 1973. ♦

♦ *Marco Rossi, Marco Q. Rossi & Associati, Genoa, Milan, and New York*