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tax notes international

Volume 44, Number 10 ■ December 4, 2006

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Reprinted from *Tax Notes Int'l*, December 4, 2006, p. 753

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Italy's Revenue Agency, in Ruling 131/E of November 13, confirmed that a nonresident service provider that organized meetings and conferences in Italy would be subject to VAT in Italy on payments received for those services but would be exempt from income tax under article 7 of the Italy-Netherlands treaty.

The ruling specifically discussed whether the taxpayer would have a permanent establishment in Italy, within the meaning of article 5 of the Italy-Netherlands tax treaty, and therefore be subject to tax in Italy on income realized from the performance of services (namely, organizing meetings and conferences) in Italy. The ruling also addressed whether the taxpayer would be subject to VAT in Italy on payments received for those services on the basis that Italy would be the place of supply of the services for VAT purposes.

Facts of the Case

The ruling was requested by a nonprofit organization, incorporated and managed in the Netherlands, whose members are scientific organizations based in various EU member countries. Its statutory objectives consist of the promotion and development of international telecommunications and information infrastructures for research and educational purposes, and it pursues those objectives by organizing meetings and conferences around the world, one of which was to be held in Italy.

Under the scenario presented by the taxpayer, the activities required for the organization of the meeting (including staffing, hotel reservations, catering, and so on) would be carried out by an Italian company acting as a subcontractor of the taxpayer in exchange for a fee.

Attendees would pay a registration fee in exchange for admission to the conference, access to conference materials, and admission to the conference dinner and coffee breaks, as well as make cash contributions in exchange for the use of spaces and stands to present and advertise their products. All payments would be made directly to the taxpayer at its offices in the Netherlands and would cover the costs of organizing the meeting (with no net profit for the taxpayer).

The taxpayer asked the Revenue Agency for clarification about Italy's tax treatment of the payments it would receive in connection with the organization of the meeting, for both income tax and VAT purposes.

Taxpayer's Position

The taxpayer took the position that it would not have a PE in Italy as a result of the organization of the meeting and that there would be no income subject to tax in Italy.

Regarding VAT, it argued that its activity is not a business activity and therefore falls outside the scope of VAT. It maintained that, if subject to VAT, it would be entitled to a credit in Italy for input VAT.

Revenue Agency's Opinion

The Revenue Agency maintained that the taxpayer's activity in furtherance of its statutory purposes constitutes a trade or business because it is regular, continuous, and considerable. Therefore, it said, the taxpayer is subject to income tax on the profits related to its business. However, it said the taxpayer would not be deemed to have a PE in Italy in connection with the organization of the meeting there because the short duration of the meeting (four days) is insufficient to create a PE. Therefore, any profits realized by the taxpayer in connection

with the organization of the meeting in Italy would be exempt from income tax under article 7 of the Italy-Netherlands treaty.

On the VAT issue, the agency ruled that although the taxpayer is a nonprofit organization, as a matter of Dutch law, it nevertheless carries out a business activity (as defined above). Even if that business activity may be considered secondary, ancillary, or instrumental to its primary nonbusiness purposes, it is still sufficient to acquire VAT taxable status, it said.

The agency then analyzed the place of supply of the services to determine whether any VAT would be due in Italy. For that purpose, it distinguished between the payments received as fees for attendance at the meeting (including conference materials, dinner, and coffee breaks), and the cash contributions paid in exchange for the use of space for attendees to display and advertise their products.

Regarding the registration fee, the agency took the position that it is a payment for services related to a cultural event. According to the EU Sixth VAT Directive, the place of supply of cultural, scientific, artistic, educational, recreational, and sporting events is the place where the services are performed (article 9, paragraph 2(c)). Therefore, the agency concluded that, because the organization of the meeting would take place in Italy, the registration fee would be subject to VAT in Italy.

The agency expressly revoked its Ruling 189 of August 17, 1996, in which it had maintained that no VAT would be due in Italy on payments for registration and participation in meetings organized in Italy by a U.K. publisher.

The agency characterized the contributions paid by attendees for the use of display and advertising space as payments for advertising services and said the place of supply of those services should be determined with reference to the various tests set forth in the Sixth VAT Directive (and the domestic implementing legislation) as follows:

- place of recipient, if the recipient is subject to VAT and is resident in an EU member state other than the place of the supplier (article 9, paragraph 2(e) of the Sixth VAT Directive and article 7, paragraph 4 (d) of Presidential Decree 633 of 1973);
- place of supplier, if the recipient is a private consumer resident in another EU member state (article 9, paragraph 1 of the Sixth VAT Directive); and
- Italy, as the place of use of the services, if the recipient is subject to VAT and is resident in Italy, or if the recipient (either a private consumer or an enterprise) is resident in a non-EU country (article 7, paragraph 4 (f) of Presidential Decree 633 of 1973).

The agency concluded that VAT would be due in Italy on the basis of the place of use test even though the supplier is not resident in Italy. Again, the agency implicitly reversed a previous interpretation whereby no VAT would be due in Italy if the supplier is nonresident (Circular 23 of August 3, 1979).

The agency pointed out that if VAT is due and the recipient of the services is resident in Italy and not subject to VAT, the tax cannot be paid through the reverse charge mechanism; therefore, the nonresident supplier must take the necessary steps in Italy to pay the tax due and file the VAT return (either directly or by appointing a VAT agent in Italy for that purpose).

Conclusions

The ruling is significant in that it reverses the tax administration's earlier position that payments made for admission to meetings and conferences organized in Italy by a foreign person are not subject to VAT in Italy. It also changes a previous interpretation that if advertising services are used in Italy but the supplier of the services is a nonresident, no VAT would be due in Italy in accordance with the place of use test.

According to the ruling, VAT is due if the services are used in Italy, even though the services are supplied by a nonresident person.

Regarding the income tax (PE) issues, the ruling is less meaningful because it does not elaborate. The agency emphasized the brevity of the meeting to exclude the existence of a PE, most likely relying on the explanation provided in paragraph 6 of the commentary to article 5 of the OECD model income tax treaty.

It did not investigate or discuss whether the Italian company carrying out the organization of the meeting as subcontractor for the foreign taxpayer could be regarded as the taxpayer's dependent agent PE, within the meaning of article 5, paragraph 5 of the treaty, or whether the taxpayer could be regarded as having a fixed place of business with the premises of its Italian subcontractor.

In light of the ruling, foreign taxpayers engaged in organizing meetings or conferences in Italy or providing advertising services for use in Italy must pay specific attention to their potential VAT liabilities. They may inadvertently be exposed to VAT duties, and failure to comply would have negative consequences, including sanctions. ◆

♦ *Marco Rossi, founding member, Marco Q. Rossi & Associati, Italy and New York*