

Tax Authorities Rule on VAT Recovery Mechanism for PEs

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The Italian tax authorities on November 24 issued Resolution 108/E, explaining the VAT recovery mechanism available to Italian permanent establishments of nonresident corporations.

Generally, foreign corporations must charge Italian VAT on sales of goods and services to Italian purchasers who are not VAT registered. In the absence of a PE in Italy, foreign corporations may appoint a VAT agent to fulfill their VAT obligations. Alternatively, foreign corporations — if they are EU resident — may apply directly for a VAT number and comply with the requirements themselves.

Foreign corporations may credit any VAT paid to Italian suppliers against VAT charged to Italian buyers.

Until recently, under Resolution 327/E of July 30, 2008, if a foreign corporation had two different VAT classifications in Italy — one as a result of VAT transactions conducted using the identification number assigned directly to the foreign entity, and another for activities conducted under the VAT number assigned to the Italian PE of that same foreign corporation — the foreign corporation was not allowed to offset any VAT collected and resulting from one classification against the VAT paid and resulting from the other classification.

After the European Court of Justice held in *European Commission v. Italy* (C-244/08) that Italy's VAT laws conflicted with EU rules, Resolution 327/E was set aside and Italy's VAT law was amended by article 11 of Law Decree 135 of September 25, 2009. (For the ECJ's summary of its judgment in *European Commission v. Italy*, see *Doc 2009-21055* or *2009 WTD 183-17*.) The VAT statute now provides that a foreign corporation may recover any Italian VAT paid through a PE.

Similarly, article 17 of Presidential Decree 633/72 was amended to provide that a foreign corporation conducting its VAT activities through a PE cannot maintain two VAT classifications at the same time by also opening a VAT position directly in its own name or through the appointment of a VAT agent.

What hadn't been determined was whether a foreign corporation previously acting for VAT purposes directly, and later operating for VAT purposes through a PE, could offset any VAT paid using the VAT number of the former against any VAT charged under the VAT number of the latter.

In Resolution 108/E, the tax authorities ruled in the affirmative and clarified that the same principles apply for foreign corporations that had operated through a VAT agent rather than by using direct VAT registration. ◆

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