

Tax Guidance Targets Foreign Real Estate

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COUNTRY DIGEST

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The Italian tax authorities on July 2 released Circular Letter 28/E providing guidance on the criteria for applying the provisions of Law 214 (Dec. 22, 2011), which introduced a tax on the value of foreign real estate owned by Italian resident individuals. Effective from 2011, the new tax is imposed at a rate of 0.76 percent on the assessed value, cost, or fair market value of the foreign real estate. (For prior coverage, see *Tax Notes Int'l*, Jan. 9, 2012, p. 115, *Doc 2012-5*, or *2012 WTD 2-1*.)

The law attempts to mitigate double taxation by allowing Italian residents to credit “net worth” foreign taxes paid abroad against the new tax. Before the issuance of Circular 28/E, it was unclear which foreign real estate taxes could be considered net worth taxes and therefore creditable against the new tax, regardless of their classification as net worth taxes under local laws.

The foreign tax credit mechanism raised another concern. Law 214 provides that the principles of the individual income tax should be followed when applying and assessing the new tax. If the tax is applied with reference to the income tax rules, one may con-

clude that the credit is effectively available only if the foreign property generates income reported in Italy. This is because, similar to U.S. rules, a ceiling limitation formula provides that the allowable foreign tax credit cannot exceed the part of a taxpayer’s total Italian tax that is proportionate to the taxpayer’s taxable income from sources outside Italy compared with the total taxable income.

Circular 28/E contains a fairly comprehensive list of foreign taxes that are creditable against the Italian tax on foreign real estate. The list includes real property taxes paid in the United States (presumably, regardless of the state and/or local jurisdiction imposing the tax), the *tax foncière* and the *impôt de solidarité sur la fortune* in France, the *impuesto sobre bienes inmuebles* in Spain, the *impuesto inmobiliario* in Argentina, and Germany’s *Grundsteuer*. A qualifying foreign tax is creditable to the extent of the Italian tax.

Under the Italian system, circulars do not have the same level of authority as, for example, U.S. Treasury regulations. While circulars are binding for the Italian Revenue, both taxpayers and tax courts may challenge them. ♦

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