ITALY

ITALY ENACTS TAX INCENTIVES FOR NEW INVESTMENTS

BY LUIGI PERIN

On October 10, 2001, the Italian Parliament gave final approval to the Preliminary Measures for Economic Recovery Act, and on October 24, 2001, the new provisions were published on the Italian National Register (*Gazzetta Ufficiale*) with Law no. 383 of October 18, 2001. The Act, which is aimed at boosting the Italian economy, contains numerous tax provisions on which the Italian Ministry of Economics and Finance has issued detailed guidance. Among the changes are complete repeal of the estate tax and partial repeal of the gift tax.

New Tremonti Incentives

The new provisions, which encourage new capital investments and personnel training made in 2001 and 2002, were drafted by Italy's Economics Minister Giulio Tremonti. The new law is referred to as the "Tremonti-*bis*," since it reproduces similar provisions introduced in 1994 by Professor Tremonti. Circular no. 90/E of October 17, 2001, clarifies the scope of the new tax incentives, including coordination with pre-existing tax incentive provisions such as the Dual Income Tax (DIT) and Visco incentives.[1]

The new rules grant taxpayers special deductions in computing taxable income for purposes of Italy's income taxes. The principal taxes imposed on Italian corporations are the corporate income tax (*Imposta sul Reddito delle Persone Giuridiche*, or IRPEG) and a local tax (*Imposta Regionale sulle Attivita Produttive*, or IRAP). The Ministry of Finance clarified that the special deductions will not apply for IRAP purposes. Multinational enterprises with an Italian branch or subsidiary may want to review their current budgets and plans for new capital investments and personnel training expenditures to benefit the most from the tax incentives that have been introduced by the new legislation.

Scope of new incentives. The incentive measures are available to Italian corporations, partnerships, sole proprietorships, self-employed individuals, permanent establishments of foreign persons, and not-for-profit organizations engaged in a trade or business. The tax incentives apply only to those entities already in existence on the date of publication of the new law in the *Gazzetta Ufficiale*.

For calendar-year taxpayers, the special deductions are available for tax years 2001 and 2002. For each tax year, the special deduction is computed as 50% of the cost of new investments that exceeds the average of the cost of new investments made during the previous five tax years. New investments for each

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period are computed net of investment dispositions. For 2001, new investments are considered only those made after June 30, 2001. Taxpayers may elect to exclude from the average the tax year in which new investments were the highest. For taxpayers that were in business for less than five years, the look-back period covers all tax years during which the taxpayer was in business.

The new investment tax incentives apply in addition to the normal depreciation allowances with the result that, for income tax purposes, the investor is able to write off more than the cost of the investment and thus effectively reduce income taxes. The incentives apply to expenditures incurred for building new plants (including completing existing but unfinished plants) or expanding, reactivating, or modernizing existing plants. They also apply to purchases of new fixed assets and to acquisitions of real property used in a trade or business. Purchases of intangibles qualify for the incentive program to the extent that the intangible acquired was not previously exploited in Italy. In addition, the special deductions are available for expenses incurred for personnel training and nursery school services offered to employees' children under three years old. Anti-avoidance measures revoke the benefit of the special deductions if the newly acquired assets are sold within two tax years (five years for real estate property) from the original purchase date.

Incentives planning. While the new law provides most investors with an opportunity to decrease their effective Italian income tax rate, careful planning must be implemented to maximize benefits and avoid pitfalls. For example, under the new provisions, for 2001, taxpayers have an option to elect the benefits of pre-existing tax incentive provisions, such as those available under the Dual Income Tax (*decreto legislativo* no. 466 of 1997) and the Visco (law no. 133 of 1999) programs,[2] provided they forgo the Tremonti-*bis* incentives. As a result, it is important to thoroughly evaluate the tax consequences under the alternative regimes before adopting one.

Also, the new tax incentives are lost on distribution of dividends to Italian shareholders. Accordingly, foreign investors with multi-tier Italian structures should also consider this factor in their tax planning.

Repeal of Estate and Gift Tax

The new law provides for the complete repeal of the estate tax and the partial repeal of the gift tax. Circular no. 91/E of October 18, 2001, provides guidance on the provisions. The Italian estate and gift tax system had been reformed just recently as a result of long and controversial debates concerning the inefficiencies of collecting the tax in Italy.

Black Economy

A significant portion of Italian tax revenue is lost every year because of the "black economy," whereby workers are paid in cash without paying either tax or social security contributions. To halt the evasion, the new provisions introduce an amnesty to allow individuals and businesses to legitimize their status for income tax and social security tax purposes by paying a flat substitute tax. Circular no. 88/E of October 11, 2001, clarifies the scope of the new measures.

Accounting and Tax Records, Capital Stock Subscriptions

The new law repeals formal requirements such as notarization and application of stamp duties to certain mandatory accounting and tax books and records.[3] Circular 92/E of October 22, 2001, provides detailed guidance on these provisions. New measures also introduce an option for stockholders of Italian corporations (with some restrictions) to subscribe to the capital by means of an insurance policy or bank guarantee. ●

1 For a prior discussion of the Tremonti legislation, see Gnetti and Serao, "Draft 2001 Italian Corporate and Tax Reform Unveiled," E&Y Foreign Desk, 12 JOIT 7 (October 2001).

2 Law 133/99, commonly referred to as the "Visco incentives," after the Minister of Finance under whose administration this law was enacted. These incentives are only temporary. For tax year 2001, taxpayers may choose to benefit from the Visco incentives, but only with respect to transactions entered into by June 30, 2001.

3 Similar to the mechanism applicable to official documents like deeds, in Italy, stamp duties are imposed on certain accounting and tax books and records.