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by Alessandro Adelchi Rossi

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CFC Rules Don't Apply to Affiliate, Revenue Agency Says

by Alessandro Adelchi Rossi

The Italian Revenue Agency on June 3 issued Resolution 72/E, addressing the applicability of Italy's controlled foreign corporation provisions to an Italian corporation's affiliate in Cyprus. Tax authorities ruled that in the absence of regulations yet to be promulgated by the Treasury Department under article 168(4) of the Italian Tax Code, the CFC rules are not applicable to affiliated companies that lack the requisite control.

Like a U.S. private letter ruling, a resolution is a letter ruling issued directly to a taxpayer that requests advice about the consequences applicable to a specific business transaction.

In 2001 Italy enacted CFC legislation under which a CFC's Italian shareholders must report their pro rata share of foreign income even if the income is not distributed to them. To prevent the perceived abuse of those rules by 50-50 shareholders, the scope of the legislation was expanded in 2003 through the introduction of article 168 into the Italian Tax Code. That provision expanded the definition of a CFC to include a foreign corporation of which at least 20 percent of the total stock is owned by Italian residents (or 10 percent if the foreign corporation's shares are listed on a stock exchange). (For prior coverage, see *Tax Notes Int'l*, Dec. 13, 2004, p. 945.)

Article 168 appears to contradict the CFC rules' intent to nullify the tax avoidance potential of those controlled corporations by requiring their Italian-resident shareholders to report the corporate income as earned, even if it is not distributed to them. As a result of article 168, the word "controlled" is sometimes a misnomer. However, the mechanics for implementing the statute as expanded by article 168 still must be explained in a ministerial decree to be issued by the Italian Treasury. Accordingly, in the Italian Revenue Agency's view, article 168 is not applicable. ◆

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