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HEADLINE: 2007 WTD 226-5 ITALY'S TAX ADMINISTRATION GRANTED ACCESS TO TAXPAYER REGISTER. (Release Date: NOVEMBER 20, 2007) (Doc 2007-25804)

ABSTRACT: Under Law 233/2006, the Italian tax police and tax inspectors, as of November 1, have access to a database that includes information regarding all taxpayers' relationships with Italian financial and banking institutions.

SUMMARY:

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Law 233/2006 has granted the Italian tax police and tax inspectors, as of November 1, access (with proper authorization) to a database that includes information regarding all taxpayers' relationships with Italian financial and banking institutions.

Visco-Bersani Law Decree 233 of July 4, 2006, (converted into Law 248 of August 4, 2006, and published in the Official Gazette 186 of August 11, 2006) introduced several provisions to thwart tax avoidance and reformulated article 7 of Presidential Decree 605 of September 29, 1973, concerning provisions about the Italian Tax Register. The register is a new tool for tax administrators and tax collection employees who investigate taxpayers' financial transactions.

New article 7 of the law establishes that financial institutions, investment firms, and intermediaries must keep records of each investor, along with the investor's tax identification number (codice fiscale), and report the information to the Tax Register at the end of each month. Client identification data, the type of relationships the investor has with financial institutions, and any kind of financial transactions (including with third parties) the investor has must be reported.

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Further, financial transactions regulated by the so-called scudo fiscale (tax shield) regulated by Law 409 of November 23, 2001, namely the statute favoring the emersion and repatriation of offshore banking accounts, are now included in the new Visco-Bersani Law Decree and will be subject to taxation and monitoring.

In the last two years, the Italian government has issued new rules permitting the tax administration to investigate banking and financial institutions in order to prevent endemic tax evasion. The Italian tax administration will base its assessments on banking and financial transactions. The new law has extended the investigation of other taxes, third parties, the nature of financial transactions, and self-employed individuals.

Law 233/2006

Taxes Considered

The new law concerns not only income tax and value added tax, but also all other taxes involved in real estate transactions (like register, cadastral, and mortgage taxes). Even customs offices are allowed limited access to the database to investigate intra-European (Intrastat) transactions.

Tax Collection

Article 35, paragraph 25 of the law establishes that employees of tax collecting firms (Riscossione S.p.A., or Equitalia) may use and extract information electronically from the tax administration database. Only selected employees of the collecting firms will be granted additional investigation capabilities.

Third Parties

Bank accounts in third parties' names will be investigated if there is evidence that the taxpayer is the real beneficial possessor of a bank account. Third parties may also be connected to the taxpayer via relations such as an agency agreement, power of attorney, or joint bank accounts. Thus, the tax administration has the power to investigate third parties' bank accounts only if there is evidence that an account could be ascribed to the taxpayer. Since 2005 the Italian Supreme Court has declared those investigations legitimate.

Application

The Italian Post Office S.p.A., brokers, investment firms, the Organismi di Investimento Collettivo del Risparmio, Societa' di Gestione del Risparmio, and Societa Italiana Di Intermediazione must apply the new regulation. They must report electronically to the Tax Register a list of all clients having financial relations or bank accounts beginning January 1, 2005 (even if those accounts are closed).

Nature of Relations Under Investigation

Tax administration can investigate any kind of financial relation, short or long term, such as the opening, closing, or amending of bank accounts, certificates of deposit, single transactions, loan requests, foreign currency purchases, requests for bank checks, cashing of checks, and purchases and sales of securities.

Transactions under special investigation are those concerning cash or securities, wire transfers, checks, requests of new credit cards, management and underwriting of securities, and safe deposit boxes. All banking and financial opera-

tions have been classified under the Corporate Banking Interbancario and the codification of the Italian Office of Exchange (Ufficio Italiano Cambi). Transactions excluded are payment of utility bills, payment of taxes, social security contributions, payment of insurance products, and transactions among brokers.

Treatment of Nonresident Aliens

Nonresident aliens with bank accounts in Italy will be subject to the application of the new regulation. Their tax identification numbers will be transferred to the Italian tax administration, along with information concerning any kind of financial transactions. Only the residency requirement will be excluded and replaced with the foreign address.

Sanctions

Financial institutions will be responsible for transmitting all financial information to the Tax Register. Article 10 of Legislative Decree no. 471 of December 18, 1997, establishes that banks and financial institutions in general will be considered responsible if they do not transmit data, information, and documents requested, if they transmit after the established deadline, or if they transmit incomplete information. For those three situations, financial institutions would be subject to fines between Euro 2,065 and Euro 20,658. However, there are two conditions under which financial institutions are not considered liable: if the omissions do not negatively affect the tax administration's assessment activity or if the new assessment does not influence the taxpayer's tax base.

Questionnaires

According to article 37, paragraph 7 of Law 233/2006, questionnaires or requests may be sent to financial institutions for tax return attachments about tax income or VAT. Questionnaires also may be sent to third parties.

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