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In a press release dated January 14, 2013, the Italian Ministry of the Economy and Finance announced that the Hong Kong-Italy income tax agreement had been signed, and ''once ratified, will intensify economic relations between the two countries according to the latest OECD standard.'' As indicated in the press release, the Hong Kong-Italy agreement has a twofold purpose:

- avoiding double taxation of cross-border income, in order to significantly help Italian companies operating in Asia; and
- allowing Italian tax authorities to obtain information (including financial data) on Italian taxpayers operating in Hong Kong in order to counter tax evasion.

This agreement, although not yet in force, is particularly relevant in the relations between the two countries.

Since the China-Italy income tax treaty does not apply to Macau and Hong Kong, the income that Italian residents derive from activities carried out within the territory of Hong Kong does not benefit from any tax treaty.

Once the agreement is ratified and enters into force, those taxpayers will benefit from the application of the agreement's provisions, resulting in lower taxation of dividends, interest, and royalties in the source state.

Further, according to the above-mentioned press release, one of the objectives of the Hong Kong-Italy agreement is to regulate the exchange of information; doing so will enable Italian tax authorities to ask Hong Kong authorities for banking information on Italian taxpayers operating in that region.

Provisions on Exchange of Information

The provision on exchange of information is based on the latest version of article 26 of the OECD model tax treaty.

Article 26(4) and (5) of the OECD model governs the exchange of information with the exception of some limitations imposed by article 26(3). Specifically, paragraph 3:

- Provides that the supplying state, in providing information to the other contracting state, will not be required to carry out measures at variance with its own legislation or administrative practice. Also, the supplying state will not be required to provide information that would not be obtainable under the law or the administrative practice of the requesting state.
- Contains a provision regarding the disclosure of confidential information (for example, trade secrets and professional privilege).
- Includes a limiting provision regarding information that concerns the fundamental interests of the requesting state. The contracting states are not obliged to supply information the disclosure of which would be contrary to the *ordre public*.

Article 26(4) of the OECD model provides that contracting states will use ''information gathering measures'' even if this is required exclusively to supply information to the other contracting state. The term ''information gathering measures'' refers to the legal, administrative, or judicial procedures that allow the contracting state to obtain and supply the requested information.

Article 26(4) clarifies that that obligation is subject to the limitations outlined in article 26(3) but adds that those restrictions should not be construed to permit a state to refuse to supply information solely because its laws or practices require the existence of a domestic tax interest.

Article 26(5) is meant to ensure that the limitations of article 26(3) of the OECD model are not used to deny the exchange of information held by banks, other financial institutions, nominees, or persons acting in an agency or a fiduciary capacity, or concerning ownership interest in a person. Paragraph 5, therefore, prevents a contracting state from refusing to provide information to a treaty counterpart merely because that information is held by a bank or other financial institution.

On July 18, 2012, the OECD published ''Update to Article 26 of the OECD Model Tax Convention and its Commentary'' (approved by the OECD council on July 17, 2012), which modifies article 26 of the OECD model and its commentary. The objective of those changes is to increase the effectiveness of treaty provisions on exchange of information.

In particular, the following provision was added to article 26(2):

> Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.

This change allows the competent authorities of the contracting states to use the information received for purposes other than those listed in paragraph 2, provided that the use is permitted by the laws of both contracting states and is approved by the supplying state.

Changes to the commentary to article 26 concern, in particular, the interpretation of the standard of ''foreseeable relevance'' and the expression ''fishing expeditions.'' Regarding ''fishing expeditions,'' the new paragraph 5.1 of the commentary to article 26 stipulates that a request does not constitute a fishing expedition merely because the name or address of the person under investigation or examination is not indicated, is indicated incorrectly, or is presented in a nonstandard format. However, the requesting state must provide sufficient information to permit the identification of the taxpayer.

Regarding the standard of foreseeable relevance, the new paragraph 5.2 of the commentary to article 26 of the OECD model provides that this requirement may be satisfied if the request for information concerns a single taxpayer and also, under specific conditions, if it concerns a group of taxpayers.

Regarding the exchange of information under income tax treaties, on June 13, 2012, Italy signed an amending protocol to the 2002 treaty with San Marino, in order to adapt its provisions on exchange of information to the standards established by the OECD.

The importance of the provisions on exchange of information is highlighted in paragraph 1 of Article V of the amending protocol, which provides that changes to the regulation concerning dividends, interest, and royalties are applied if the exchange of information regulated by article 26 of the same treaty is indeed implemented.

The amending protocol has been ratified by San Marino; it is pending ratification by Italy.

Conclusions

The Hong Kong-Italy agreement could have significant implications, including the exclusion of Hong Kong from Italy's blacklist. Note that Hong Kong is included on:

- The blacklist regarding individuals for the purpose of article 2, paragraph 2-bis of the Italian Income Tax Code (TUIR). According to that article, natural persons who moved to blacklisted countries and are removed from the registry of the resident population in Italy are nevertheless considered taxpayers in Italy.
- The blacklist that identifies the countries to which the legislation on controlled foreign companies applies (according to article 167 of the TUIR).
- The blacklist that identifies the states or territories for which there are regulations stating the nondeductibility of costs deriving from transactions with residents of those states.

As of March 15, 2013, Italy's treaty network consists of 110 bilateral treaties, 104 of which are income tax treaties and six of which are tax information exchange agreements. ◆