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NEW ITALIAN IMPLEMENTATION RULES MEAN TAXPAYERS HAVE OPTIONS IN LIGHT OF CAPITAL GAINS TAX INCREASE

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Italy's Finance Act introduced rules last summer for the harmonization of tax rates on investment income, setting the flat tax rate on capital gains at 20 percent, up from 12.5 percent, effective from 1 January 2012.[1] (For prior coverage, see *Flash International Executive Alert* 2011-148, 20 September 2011.)

On 13 December 2011, Italy's Ministry of Economy and Finance issued a Decree that contains implementation rules dealing with and allowing for the possibility of individuals to be taxed on their capital gains accrued up to 31 December 2011, at the 12.5-percent tax rate. The Decree has been published in the country's official gazette, *Gazzetta Ufficiale*.[2]

Basically, the implementation rules allow for the "simulation" of the sale of one's financial investments (e.g., shares, securities, etc.) as at 31 December 2011, in order to calculate the hypothetical capital gain (or loss) and pay the flat tax of 12.5 percent, or deduct the loss and then consider the financial investment for tax purposes as if it was acquired at 1 January 2012. The rules allow, in the calculation of the taxable base, for the deduction also of the previous years' losses (if any).

How to Opt for the Rule and When to Pay

According to the implementation rules, if the individual is assisted by an authorized Italian intermediary, the option (to be subject to the aforementioned provision under the new implementation rules) must be chosen and exercised by 31 March 2012, by means of a written communication to the intermediary. If the individual is not assisted by an authorized Italian intermediary, the option must be chosen and exercised directly in the 2011 annual income tax return.

- If the individual is assisted by an authorized Italian intermediary, the payment of the flat tax is made directly by the intermediary by 16 May 2012. In other words, for shares held with an Italian bank where the bank is in charge of handling the whole portfolio (so-called "*regime amministrato*"), then the individual has the possibility to ask his or her bank to apply the step-up to the whole portfolio by 31 March 2012. The Italian bank will calculate capital gains and/or capital losses on all shares owned, determine the net gain if any, withhold, and remit the applicable tax by 16 May 2012.
- If the individual is not assisted by an authorized Italian intermediary, the payment of the flat tax is made by the deadline for paying the 2011 income tax (16 June 2012). In other words, for all other shares (i.e., shares held with an Italian bank where the bank is not in charge of handling the portfolio, shares held with a foreign bank, etc.), then the individual has the possibility to calculate capital gains and/or

capital losses on all shares owned, determine the net gain if any, remit the applicable tax by 16 June 2012 (ordinary payment deadline), and indicate in his or her 2011 tax return to be filed by 30 September 2012 (ordinary filing deadline) that he/she has opted for this possibility.

Footnotes:

1 As per Legislative Decree No. 138/2011, amended by conversion Law No. 148/2011. *Legge di conversione del D.L. sulla manovra finanziaria bis. Legge14 settembre 2011, n. 148 (in Gazzetta Ufficiale n. 216 del 16 settembre 2011 - in vigore dal 17 settembre 2011) - Conversione in legge, con modificazioni, del decreto-legge 13 agosto 2011, n. 138, recante ulteriori misure urgenti per la stabilizzazione finanziaria e per lo sviluppo.*

2 *Decreto 13 dicembre 2011, Modalita' di esercizio della opzione per l'affrancamento delle plusvalenze latenti*. (11A16233) (*Gazzetta Ufficiale n. 292 del 16 dicembre 2011*).

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