

January 29, 2014
2014-008

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

Italy – New Circular Brings Further Changes to Financial Asset Reporting System

by Antonio Deidda and David Roberts, KStudio Associato, Milan (K Studio Associato in Italy is a KPMG International member firm)

Italy's tax agency has issued new guidance with respect to its foreign asset reporting requirements for all Italian residents. As a result, many foreign workers on assignment in Italy will now be subject to these rules.

Why This Matters

The new rules have eased reporting for certain financial transfers in and out of Italy. However, the *de minimis* threshold for reporting foreign financial assets has been abolished so reporting will apply to a much wider population. This means, for example, that expatriates working in Italy may now be required to report even more information, such as minimal shareholdings and other financial investments abroad.

Further, although the penalty regime is somewhat eased, it may be more rigorously and consistently enforced.

Changes under New Circular¹: Form RW, Penalties, "Effective Owner" of Assets, Withholding Obligations

The Foreign Investment Monitoring Regime, introduced by the *Legge europea 2013*,² applies to all individuals who are tax resident in Italy and who hold assets/investments abroad which are capable of producing income or gains. The definition of assets is fairly broad, encompassing not only bank accounts, stock and bond holdings, and real estate, but also works of art, registered yachts, etc.

For 2013 there is no requirement to report transfers in and out of Italy of financial investments. The completion of the Form RW will now only be required for purposes of indicating the total amounts of financial and other assets held abroad during the year. The previous EUR 10,000 *de minimis* limit for reporting has been abolished – for 2013 onwards, all foreign financial investments and other assets have to be reported regardless of the amount.

Penalties for omissions or incorrect reporting on the Form RW have been reduced although they remain high. The penalty is from 3 percent to 15 percent of an asset incorrectly declared where the asset is situated in a "white-list" country. This is increased from 6 percent to 30 percent for assets located in a "black-list" country. These countries are designated in the circular. The revised penalty regime also applies to offenses pre-dating the introduction of the *Legge europea*.

Clarification Regarding the “Effective Owner” of Assets Held Abroad

The circular clarifies that the Foreign Investment Monitoring Regime applies not only to individuals who hold foreign assets directly, but also to individuals who hold assets through companies or other legal entities and who would be treated as the “effective owner” in respect of Italian anti-money laundering laws.

- For assets held through a company, the effective owner is regarded as an individual who possesses or controls either directly or indirectly 25 percent or more of the shares in a company, except in the case of a company quoted on a regulated stock market and subject to European Union laws or equivalent international standards, or the individual who in any other way exercises control over a legal entity.
- For assets held through trusts, foundations, and other legally constituted entities, the following are regarded as “effective owners”:
 - * Where the future beneficiaries are identified – any individuals who benefit from 25 percent or more of the patrimony of the entity;
 - * Where the beneficiaries are not yet identified – the category of persons for whom the principal interest of the trust is operated;
 - * Individuals who exercise control over 25 percent or more of the assets of the entity.

Where the above conditions are met, the individual is required to indicate on Form RW, the value of the holding in the company together with the percentage of the holding. If the holding is in a company resident in a so-called white-list country, which in turn owns foreign investments or financial interests, the individual is required only to enter the value of the shareholding. Where the company is resident in a black-list country, then instead of the value of the shares in that company, the whole of the assets held by the company must be declared, so as to be on a transparent basis. Further, there are additional record-keeping requirements with respect to assets held through companies resident in black-list countries. Similar considerations apply to assets held by trusts.

Withholding Taxes through Italian Intermediaries

Up until now, investment income from financial activities managed by Italian intermediaries has been subject to a separate taxation rate in Italy (currently 20 percent); unless the investments are controlled by an Italian intermediary who accounts for the tax, this income is reported by the individual on the Italian tax return and the tax paid accordingly.

The withholding obligation is now extended to income transferred to Italy which is not subject to separate taxation, but which is included in general income on the tax return. Such income would include:

- Capital gains derived from the sale of property abroad;
- Rental income derived from property abroad;
- Other income derived from leasing assets held abroad, such as cars, boats, and planes;
- Capital gains derived from qualified shareholdings in nonresident companies.

Financial institutions (or other intermediaries) are required to withhold tax any time they are involved in a transaction from abroad. The tax withheld is treated as a payment toward the individual's final tax liability. The withholding will be made automatically, unless the individual attests that the transfer is not derived from investments abroad. A self-certification can also be made in respect of a series of

transfers being made through the same intermediary. It is up to the individual to provide the necessary information to identify the source of income and the taxable amount, otherwise withholding needs to be operated on the whole amount. Where an amount has been over-withheld, then the individual can request the amount back by 28 February of the following year.

The new withholding regime starts from 1 January 2014. The withholding obligation applies to banks, all foreign exchange bureaus, financial intermediaries, and the Post Office.

KPMG Note

Although the abolition of the reporting requirements for transfers is to be welcomed, the abolition of the EUR 10,000 limit will bring large numbers of individuals who hold foreign assets of less than EUR 10,000 within the reporting limit – this goes against the vein of tax simplification. So, with no minimum limit for reporting foreign assets, an Italian tax resident would have to report all foreign assets capable of producing income. Moreover, expatriates will now have to declare even minimal shareholdings and other financial investments abroad. The changes mean that the current challenging reporting requirement has been extended to a much wider population and the potential for mis-reporting or non-reporting could be greater. In addition, the penalty regime may be more rigorously and consistently enforced.

This is further complicated by the continued vagueness around the rules which may create reporting and valuation difficulties in respect of non-financial assets (for example a precise definition of precious objects/ works of art and the applicability of the regime to so-called luxury cars).

With respect to the rules regarding the effective owner, expatriates will now have to pay more careful attention to whether they own assets through foreign-registered companies or whether they are identified in the class of future beneficiaries from a trust.

The new withholding tax regime could be burdensome for individuals transferring salaries or other payments into Italy from abroad, since they may have to certify to the bank receiving the income why the income is not taxable in Italy. This may be a particular issue where the foreign bank account includes “mixed” funds (for example salary, rental income, and capital). Failure to certify would mean the Italian receiving bank potentially having to withhold taxes and a subsequent difficulty in recovering the amount. Individuals may, therefore, wish to consider carefully which bank account they use to transfer funds to Italy..

Footnotes:

1 Circolare N38/E Agenzia delle Entrate, Roma, 23 December 2013.

2 For prior coverage of the *Legge europea 2013* and the Foreign Investment Monitoring Regime, see [Flash International Executive Alert 2013-124](#) (12 September 2013).

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The information contained in this newsletter was submitted by the KPMG International member firm in Italy. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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