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INHERITANCE TAX

Determination of the value of shares traded at AIM Italia for inheritance tax purposes.

Italian tax authorities stated that the value of the shares traded at AIM Italia is determined on the basis of the same rules as for shares of companies listed on the ordinary markets.

The Italian tax authorities have taken a position on the criterion to be applied in evaluating the shares held by a deceased and traded at Aim Italia (i.e. the Alternative Capital Market of the Italian Stock Exchange) for inheritance tax purposes (reply No 514 of 11 December 2019 to the ruling submitted by an executor).

Italian law states that the value of shares must be determined differently on the basis of the type of shares held. In particular, the value of shares of listed companies is determined by taking into account the average price of the last quarter prior to the opening of the succession, plus accrued interest (Art. 16, (a) of legislative decree 346/90). On the contrary, the value of shares not listed in the stock exchange or not traded on the restricted market is determined on the basis of shareholders' equity as recorded in the last approved financial statements, taking into account the significant events occurred subsequently to the approval of the balance sheet (Art. 16, (b) of legislative decree 346/90).

In the case examined by the tax authorities, within the inheritance estate there were shares traded at Aim Italia, therefore not listed in the ordinary stock exchange market or traded on the restricted market. Consequently, the executor appointed in the will considered that the equity criteria should have been applied. However, the Italian tax authorities took an innovative position establishing that the criterion set out in the above mentioned Article 16(a), based on the average price of the last quarter prior to opening of the succession, shall apply also for the shares traded at AIM Italia.

Indeed, the purpose of the law is to simplify the evaluation of the shares upon the heirs, providing, where possible, objective criteria useful to measure the effective taxpayer's capacity.

TAX

New provisions concerning the direct taxation of foreign trusts

New provisions introduced by the so called Tax Decree penalize Italian beneficiaries of trusts located in States with privileged taxation.

The so called "Tax Decree" (i.e. the Law Decree no. 124 of 26 October 2019) introduces some provisions in relation to the income taxes of foreign trusts: these new provisions penalize Italian beneficiaries of trusts located in States with privileged taxation.

Prior to this reform, in Italy trusts were subject to different tax treatment based on the rights that the deed of settlement of the trust granted to the beneficiaries. In fact, if the beneficiaries had the right to oblige the trustee to carry out distributions in their favour (i.e. the beneficiaries were identified and vested), the income earned by the so-called "transparent" trust was attributed to the resident beneficiaries as capital

income, independently of the effective collection of such income and in proportion to the participations identified in the deed of settlement. On the contrary, if the beneficiaries were not granted with such vesting right and the distributions were left to the discretion of the trustee, the income of the so-called “non-transparent” (or opaque) trusts was taxed upon the trust applying the IRES (*i.e.* the corporate tax). Therefore, as the opaque trusts were taxed directly, any distributions in favour of the resident beneficiaries were tax free. In this regard, please note that the non-resident “non-transparent” trust is taxed only in relation to Italian sourced income (if any).

Article 13 of the Tax Decree introduces some provisions concerning foreign “non-transparent” trusts. In particular, any sums paid to resident beneficiaries by “non-transparent” trusts located in the so called “States with privileged taxation” shall be treated as capital income. On the contrary, any distributions of income carried out by “non-transparent” trusts located in States without privileged taxation remain tax free. In addition, distributions of equity are also not taxable. Finally, Article 13 introduces a presumption: whenever it is not possible to establish if the distribution carried out by the foreign trust is a distribution of income or a distribution of equity, it is considered a distribution of income and thus taxed accordingly.

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