Hybrid Mismatch Arrangements: The Italian Chapter

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COMMA 10
Chartered Accountants & Lawyers
Milan

GGI ITPG Meeting, Cannes 26th April 2012

OECD March 2012 Report:

Examples

1) Double deduction

2) Deduction / no inclusion

3) Foreign tax credit generators

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OECD March 2012 Report:

C) Rules addressing the non-inclusion of income which is deductible at the level of the payer

Italy (page 19)

55. According to Italian law, profits distributed by non-resident are 95%exempt for tax purposes only if the following conditions are met:

(i) The profits are fully linked to the economic results of the issuer or of any other companies which are part of the same group or of the specific business in relation to which financial instruments have been issued;

(ii) the profits are not deductible in the foreign country where the issuer is resident

The condition that the income distributed is non-deductible in the issuer's jurisdiction must be proved by a declaration from the issuer itself or by other appropriate evidence

(articles 89.3 and 44.2 of the Italian Consolidated Income Tax Code)

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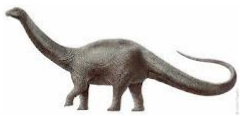
2) Deduction / no inclusion



BRONTOS CASE

Prosecutors in Milan suspect that UniCredit deprived tax authorities of 245 million euros ($320 million) between 2007 and 2008 through a complex financial mechanism that transformed interest into dividends kwown as BRONTOS

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The Operation

Interbank Market
Loan from an Italian Bank to a UK Bank

Final effects:

- **Taxable Revenues for the Italian Bank**

- **Deductible Costs for the UK Bank**

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LUXPARENT

LUXSUB

PPI PROFIT PARTECIPATION INSTRUMENTS

Currency: Turkish Lira

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Final Effects

-Dividends 95% tax exempt in Italy

- Costs in UK

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BRONTOS CASE

"Alessandro Profumo, former C.E.O of UniCredt was charged with corporate tax fraud with 16 other current anf former UniCredit emplyees and 3 representative of British bank Barclays accused of helping the Italian lender to put in place the mechanism."

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GOSSIP?

Advisor: Vitali Romagnoli Piccardi e Associati

Established in the early 80s under the name Studio Tremonti

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1) Double deduction

Foreign Investments: Subsidiary vs Branch

Subsidiary:

Participation exemption

Dividends 95% exempt for tax purposes

Branch:

Imputation system

Profits and losses fully consolidated for tax purposes

Tax credit for tax paid abroad

Foreign Investments: Subsidiary vs Branch

ENI Group

eni

Incorporation of Italian companies with 100% business activity abroad (oleodotti)

Loss fully deductible from group consolidated taxable basis

GOSSIP?

Main shareholder

MEF Ministero dell'Economia e delle Finanze

Tax Authority

MEF Ministero dell'Economia e delle Finanze

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