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ITALY SIGNS THE CONVENTION AGAINST DOUBLE TAXATION WITH HONG KONG
THE AGREEMENT FOLLOWS THE OSCE MODEL, AND WILL COME INTO EFFECT ONLY AFTER RATIFICATION

In a press release on 14 January 2013 the Ministry of Finance communicated the undersigning of the Convention against double taxation with Hong Kong

Although the agreement is not actually effective until its ratification (which often requires many months, sometimes years), its undersigning is a hugely significant step forward in relations with the Asian territory, which has considerable levels of trade and commercial dealings with Italy. This development potentially eliminates the discriminatory treatment that has so far characterised relations between the two countries, and is an exception in Europe, in which relations with Hong Kong are generally "standardized".

In the current context, the incomes that Italian residents declare as a result of activities exercised in Hong Kong may not benefit from any Convention against double taxation impositions, since the Convention between Italy and China (the Republic of China is, in turn, linked to Hong Kong through an ad hoc Convention) is unenforceable by reason of express provision.
Once the ratification process is completed for the new agreement, it will be possible to benefit from all the provisions therein contained, most of which are borrowed from the OCSE model of international Conventions: specifically, dividends, interests and royalties may benefit from reduced taxation in the source country, with rates of 10%, 12.5% and 15% respectively.

The Convention also contains ad hoc rules for the exchange of information which, as pointed out by the Ministry press release, may authorise Italy to request from the Asiatic territory's Authorities information also of a banking nature regarding taxpayers operating in Hong Kong. As was to be expected, these are not automatic procedures, but rather an exchange of information of a selective nature, limited to taxpayers on which verification activities are focused, and which may be used only by the tax Administration within the sphere of assessment procedures or tax disputes: there is also a clause stating that a State may not refuse to furnish the aforementioned information solely for the reason that the information is held by a bank, by another financial institution, or by a proxy or person operating in the capacity of agent or trustee.

The importance of the Convention obviously goes beyond the "material" benefits that taxpayers falling within the sphere of application will be able to enjoy.

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The coming into force of the agreement could, on the contrary, be a first step towards the Italian legislator questioning whether the permanence of Hong Kong in the black lists for tax purposes is effectively justified. In the current legislative context, in fact, trade with Italy is penalised both with regards to the acquisition of goods and services from third party enterprises (being subject to separate disclosure), and especially with regards to the position of subsidiaries located in the Asiatic territory, subject to the CTC regulations and to the consequent costly administrative obligations that penalise, most of all, the repatriation of profits and often impose the establishment, in lines of control, of further "layers" represented by sub-holding companies. Keeping Hong Kong in the black lists also implies a serious of other obligations, such as, for example, "black list" declarations.

The undersigning of the Convention, and particularly, the possibility of obtaining a selective exchange of information, could spur the Legislator into intervening on the question, in order to finally put into practice the proposal contained in Law 244/2007 to replace the various black lists with a single white list, already provided for in legislative terms by art. 168-bis of the Consolidated Act but which has never been implemented, limiting the tax penalisation so far provided for by the legal framework to relations with States still "impermeable" to requests for tax information received from Italy.

FAMILY TRUSTS NOT "ATTACKABLE" BY THE TAX AUTHORITIES

According to the Court of Ferrara (sentence of 10.1.2013), EQUITALIA may not register a mortgage on a property assigned to a "family trust", since there is no relation, either directly or indirectly, between the public tax authority credit and the needs of the family which would allow enforcement action on the part of the tax authorities. The Court ruled that even the fact that the assignment of the property to the family trust occurred after the receipt of a series of tax bills is not relevant. In practice, for the Ferrara judges, since the assets in the family trust could not be separated from their use for family needs, they can only be subject to mortgage registration by third parties in relation to the violation of obligations assumed in the interest of the family. Although it was possible to ascertain that the setting up of a functional "family trust" occurred after the failed payment of taxes, the establishment of the fund may only be revoked if fraudulent intent is demonstrated.

STAFF POSTING: VAT CONSEQUENCES

As is well known, pursuant to art. 8, paragraph 35, Law no. 67/1988, the charge for "staff posting" is outside the VAT field. Great care must be taken, however, since the exclusion of VAT only applies if the organisation enjoying the services of the posted worker pays the worker's employer a sum exactly equal to the cost that the latter sustains for its posted member of staff. The Supreme Court has specified (sentence no. 14053 of 3.8.2012) that this cost includes the gross salary, TFR (indemnity leaving fund) contributions, other contributions payable by the company and any travel and transfer expenses provided for in the employment contract. It should be noted that as the financial authorities are concerned, a charge lower than the cost sustained by the employer organisation would lead to the application of VAT.