

European Tax Newsalert

A Washington National Tax Services (WNTS)
Publication

Italy

February 17, 2012

New Italian rule on exit taxes

On January 24, 2012, the Italian government modified the Italian rule on exit taxes in order to reflect the European Court of Justice's ("ECJ") November 29, 2011 judgment in Case C-371/10 *National Grid Indus* (NA 2011:016). A Decree, to be enacted within 60 days of January 24, 2012, will contain specifics of the new rule.

The new rule

Article 91 of Law Decree no. 1/2012, published in the Italian Official Gazette on January 24, 2012, amended the Italian exit tax rules provided by article 166 of the Italian Tax Code.

Based on the general Italian exit taxation rules for individuals and companies carrying on a commercial activity in Italy, the transfer of residence abroad implies the taxation of unrealized capital gains, at their market value, on the assets transferred (unless they are attributed to an Italian permanent establishment).

With these new provisions, for a residence transfer to a European Union ("EU") or European Economic Area ("EEA") member state, an Italian taxpayer could opt between:

- The immediate payment of taxes due on the unrealized capital gains relating to the assets transferred or;
- The postponement of tax payments due to the actual realization of the unrealized capital gains.



An additional Ministerial Decree will specify the criteria for payment deferral. The Decree, expected within 60 days of January 24, 2012, will specify when to consider the unrealized capital gains actually realized, how to compute the tax due, and which payment procedures to use.

The new provisions were introduced to comply with the recent ECJ decision, in the case *National Grid Indus BV* (C-371/10) and to close infringement procedure no. 2010/4141, opened by the EU Commission against Italy to address exit tax rules.

In accordance with the principles expressed by the ECJ in the case *National Grid Indus BV*, the taxes due on unrealized capital gains for asset transfers should be definitively computed when the transfer occurs. The payment should be deferred until the capital gains are actually realized.

According to the new provisions, the deferral could apply to residence transfers in EU or EEA white-listed countries. Note that for deferral to apply to transfers in an EEA member state, Italy must have an agreement in place with that Country concerning the mutual assistance for tax credit recovery similar to what the Council Directive 2010/14/EU provided.

Finally, note that deferral applies to residence transfers executed after January 24, 2012. Therefore, deferring tax payments for unrealized capital gains does not apply to previous transfers. As a consequence, the new Italian provisions do not eliminate the discrimination suffered by Italian taxpayers who transferred their residence in an EU or EEA Member State before January 24, 2012.

In such cases, Italian transferring taxpayers should submit refund claims for the discrimination actually suffered.

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