

Italian Tax Authorities issue guidance on qualifying the purchase of a client list as a transfer of going concern

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Executive summary

By Response No. 81 issued on 21 March 2019 the Italian Tax Authorities (ITA) rendered a landmark opinion regarding the possibility of qualifying the purchase of client list as a transfer of going concern rather than an asset deal.

Detailed discussion

The prospective assignee and the prospective assignor of a client list (together referred to as the Claimants) submitted a tax ruling request to the ITA to confirm whether the transfer of a client list from the prospective assignor should be qualified as an asset deal rather than as a transfer of going concern.

As background, the assignee company provided optical storage service and some other supporting services acting as licensee of the assignor on the basis of a licensing agreement.

The assignor was willing to transfer all the contracts that pertained to its client list to the licensee; in this regard, the licensing agreement would have been terminated as a result of the transfer of the client list.

According to the Claimants' point of view, the transfer of the client list should have been qualified as a transfer of contracts - i.e., asset deal - rather than a transfer of going concern; because of this, the Claimants deemed such transfer taxable both for corporate income tax (i.e., IRES) and regional tax (i.e., IRAP), as well as for Value Added Tax (VAT) purposes.

In its response however, the ITA stated that the client list at stake would have to be qualified as a proper going concern, whose asset consists of the client list and whose liability consists of the fees due for licensing agreement.

Therefore, such transfer has to be treated as a transfer of going concern for the purposes of direct and indirect taxes, and also in light of the contextual resolution of the licensing

agreement; in this regard, with reference to the assignor, the capital gain arising from the transfer of going concern is taxable for IRES¹ and registration tax² purposes, but is out of scope for VAT purposes.³

Implications

The ITA's Response sets a precedent that may allow resident and nonresident applicants to submit a tax ruling request to the ITA in order to get an advance agreement upon the qualification of a transaction as a transfer of going concern.

Endnotes

1. According to provisions carried by Art. 86 para 2 of Presidential Decree No. 917/1986.
2. According to provisions carried by Art. 23 of Presidential Decree No. 131/1986.
3. According to provisions carried by Art. 2 para 3 letter b) of Presidential Decree No. 633/1972.

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