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ITALIAN TAX UPDATE

European Court of Justice Case C-475/03

Italian IRAP tax and the possible conflict with EC VAT Directive art. 33

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1. The opinion of the Advocate General (AG)

The AG addressed ECJ on March 17, 2005 supporting that Imposta Regionale sulle Attività Produttive (IRAP) is conflicting with art. 33 of VAT Directive which prevents any contracting State from introducing any tax similar to VAT.

Arguments supporting such opinion were:

- IRAP is levied from any entity or individuals performing any business activity
- IRAP is, in principle, based on the difference between revenues and cost of sales and applies on any tier of the production and distribution process
- IRAP is applied, in substance, on prices of goods and services

2. The possible consequences

In principle and according to other ECJ cases, tax payers are entitled to get refunds for taxes levied in contrast with EC Directives.

However several exceptions were made to the above principle, mainly for assuring the certainty of rights and the *bona fide* of the State involved.

Therefore, under the above circumstances, the effects from ECJ decisions resulted very minor in respect of tax payers expectations and often impacted on cases which were already appealed, if not only on perspective application.

3. The possible outcome of Italian IRAP case

IRAP contributes to Italian annual budget by €30 billion. Due to its relevance for the Country, AG envisages the possibility to make any incompatibility of IRAP with EC Directive effective from a future date. Should this be the case, no retroactive effect would result from the decision.

Italian Government is expected to react shortly before ECJ and has announced major changes to IRAP. This may lead to IRAP abolishment. Such approach would be in line with AG recommendations and may prevent any refund should ECJ concur with such view. The final outcome is still very uncertain.

In the light of the above, claims which may have been filed are to be considered as *protective claims*.

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