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Italy – High Court Rules 10% Tax on Bankers' Bonuses Is Valid

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The Italian Constitutional Court has ruled that the 10-percent tax on banking bonuses¹ is not contrary to the Italian constitution.² The 10-percent levy applies to senior executives in the financial services sector on their variable compensation paid as a bonus or stock options which exceed a certain ratio of fixed remuneration paid out from the date that the law came into force (16 July 2011).

Why This Matters

Employees in the banking sector will continue to be subject to the additional tax rate of 10 percent applied to certain bonuses, stock options, and incentive compensation. This will impact individuals who are subject to Italian tax law – including international assignees – working in this sector holding certain senior positions/titles and are in receipt of such income.

There was some speculation, following much pressure on Italy's government from the powerful financial industry, that this 10-percent levy on bankers' incentives and deferred compensation might be ruled invalid. Strong arguments were made by the plaintiffs in the case. However, with the Court's ruling, there now seems to be no impediment to the continued application of the 10-percent levy.

Background to the Case

The case had been referred to the Constitutional Court by the Tax Tribunal for the Province of Lecco, as a result of a complaint by a bank executive. The substance of the complaint was that the bonus levy was unreasonable and discriminatory in that it applied to a single category of citizens and applied a higher tax rate to those who worked in a specific sector, financial services, as compared to employees of a similar level who worked in a different sector. As such, it was argued, the law violated the concept of equality of taxation based on income and the principle of taxation according to the capacity of individuals to contribute to public spending.

Court's Decision

The Court ruled that the law did not violate the constitution on several grounds. The law had been introduced following the G20 Summit in Pittsburgh, Pennsylvania in 2009 as part of a package on financial stability, specifically addressing methods of remuneration which might incentivize excessive risk taking in the financial sector.³ (For prior coverage, see [Flash International Executive Alert 2011-118](#), 22 July 2011.) The law was introduced in a specific context and against the backdrop of EU Directive n2013/36/UE which specifically concerned remuneration policies. In that respect, the legislation introduced was coherent with respect to international policy that discourages methods of remuneration judged to be

dangerous to financial stability. The law was directed at a specific category of executives whose level of independent decision-making and autonomy might allow them to benefit from speculative activities which might prejudice financial stability. Similar risks did not apply to those employees in other economic sectors who were remunerated in the same way but did not have similar opportunities to impact financial stability as such. Therefore, according to the Court, the decision to legislate and apply the 10-percent levy to a specific sector was neither arbitrary nor unreasonable. In the same manner, the application to variable remuneration was not arbitrary regarding the Italian principle of contributive capacity.

Footnotes:

1 *Prelievo addizionale con aliquota del dieci per cento sui compensi variabili erogati sotto forma di bonus o di stock options che eccedono l'importo corrispondente alla parte fissa della retribuzione.*

2 Judgment handed down on 9 July 2014 and released on 16 July 2014. See (in Italian): Corte cost. sent. n. 201/2014, (16-07-2014) at:

http://federalismi.it/AppI MostraDoc.cfm?content=Corte+Costituzionale,+Sentenza+n.+201/2014,+in+tema+di+Tassazione+dei+compensi+corrisposti+sotto+forma+di+bonus+e+stock+options+ai+dirigenti+nel+settore+finanziario&content_auth=&Artid=26988 .

Or go directly to:

<http://federalismi.it/AppI OpenFilePDF.cfm?artid=26988&dpath=document&dfile=16072014132031.pdf&content=Corte+Costituzionale,+Sentenza+n.+201/2014,+in+tema+di+Tassazione+dei+compensi+corrisposti+sotto+forma+di+bonus+e+stock+options+ai+dirigenti+nel+settore+finanziario+--+stato+--+documentazione+--+> .

3 Art 333 DL 31 May 2010 n78, converted by Law n122 30 July 2010. D.L. 6 luglio 2011, n. 98, *Disposizioni urgenti per la stabilizzazione finanziaria*, published in the "Gazzetta Ufficiale" 6 luglio 2011, n. 155, see: <http://www.governo.it/backoffice/allegati/64174-6945.pdf> .

Legge 15 luglio 2011, n. 111, *Conversione in legge, con modificazioni, del decreto-legge 6 luglio 2011, n. 98, recante disposizioni urgenti per la stabilizzazione finanziaria*, published in the "Gazzetta Ufficiale" 16 luglio 2011, n. 164, see: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2011;111> .

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The information contained in this newsletter was submitted by the KPMG International member firm in Italy. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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