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Taxpayers Bear Burden of Proof in Avoidance Cases, Supreme Court Says

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Taxpayers Bear Burden of Proof in Avoidance Cases, Supreme Court Says

The Italian Supreme Court on April 8 issued Judgment no. 8487, holding that taxpayers bear the burden of proving that a transaction has legitimate economic reasons beyond the mere possibility of obtaining tax benefits. The decision contradicts a previous ruling — no. 1465 of January 21, 2009 in which the Court placed the burden of proof on the tax administration.

In the most recent ruling, an Italian company transferred the stock of a wholly owned subsidiary to its parent as part of a reorganization that was designed to enable the parent to go public.

Under those circumstances, Italian law provides for a reduced tax rate of 10 percent on the gain realized from the transfer of stock of the lower-tier subsidiary to the parent, instead of corporate income tax at the ordinary rate. Ultimately however, the parent company was not publicly traded.

The Court applied the antiavoidance provisions of article 37-*bis* of Presidential Decree no. 600 of 1973, saying that the provisions applied if even a single contractual transaction or legal arrangement that is legitimate on its face is used in a way that is inappropriate or abusive, and is essentially entered into for no valid economic reason except to obtain a tax advantage.

That interpretation, according to the Court, is supported by the Italian Constitution, which does not permit tax avoidance.

According to the Court, the taxpayer must document the specific economic reasons that justify the transaction in order to receive the intended tax benefits.

The April 8 ruling the latest in a series of decisions issued during the past few months on the topic of tax avoidance — demonstrates that this area is in constant flux and needs constant monitoring. ◆

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