



The Italian Revenue Agency clarifies the tax regime of payments for the alienation of image rights received by a Spanish resident movie actress

The Italian Revenue Agency recently issued Ruling No. 139/2021, which clarifies the tax treatment of payments made by an Italian resident movie production company to a Spanish resident movie actress as remuneration for the alienation of the exclusive right to exploit worldwide the image rights connected to the role of interpreter and executor ("**Image Rights**") of a movie ("**Movie**"). The Movie will be entirely produced in Italy.

Under the agreement, the actress's remuneration is split into two components: 60% for the professional artistic performance as main actress of the Movie and 40% for the alienation of the Image Rights.

The Italian resident company requested the Italian Revenue Agency to confirm whether the consideration for the alienation of the Image Rights fell into the definition of royalties under Article 12(2)(a) of the 1977 Italy-Spain tax treaty ("**Treaty**"). The Treaty provides for a 4% reduced tax rate on royalties arising from the use of, or the right to use, copyright of literary, dramatic, musical or artistic work.

Under Italian intellectual property law, rights of artists, performers or executors (i.e. individuals other than the author of an intellectual work), such as the Image Rights, are regarded as rights related to copyrights (so-called "neighbouring rights"). In past rulings of the Italian Revenue Agency and decisions of the Supreme Court, payments for the right to use "neighbouring rights" were deemed as royalties for tax treaty purposes because the treaty definition of royalties also explicitly included terms such as "other rights", "related rights", or "in all other cases" (see Ruling No. 12/E of 9 February 2004 regarding the Italy-Germany tax treaty and the Supreme Court decision No. 21220 of 29 September 2006 regarding the Italy-United States tax treaty). More recently, in the Ruling No. 493/2020 the Italian Revenue Agency took the view that "neighbouring rights" must be generally regarded as denoted by the term "copyrights" for tax treaty purposes (in particular, payments made as consideration for the alienation of the exclusive worldwide right to exploit sound recordings and recordings of performances are to be treated as royalties under Article 12 of the Italian-Switzerland tax treaty, even though the definition of royalty provided by such a treaty does not encompass expressions explicitly covering also rights other than copyrights).

In this case, the Italian Revenue Agency characterized the remuneration for the alienation of the Image Rights as income from self-employment under Italian domestic tax law since the Image Rights belong to an individual performing as professional actress on a habitual basis (see also Ruling No. 255/2009). Therefore, because the entire performance will take place in Italy, the whole actress's remuneration is deemed to be sourced in Italy.

For tax treaty purposes, the Italian Revenue Agency stated that the alienation of the Image Rights is closely connected to the artistic performance in the context of the Movie and is therefore covered by Article 17 of the Treaty, which is

substantially in line with Article 17 of the OECD Model, whereby actors' remuneration is generally taxable in the State where the performance related to the film production takes place rather than in the State where the movie is displayed in cinema hall. The Italian Revenue Agency supported its view by referring to paragraph 9.5 of the Commentary on Article 17 OECD Model, which recognizes that payments made to an entertainer for the use of, or right to use the entertainer's image rights may constitute remuneration for activities of the entertainer (covered by Article 17), if it cannot reasonably be considered that such income would have been derived in the absence of a performance of these activities. The circumstances that (i) the Image Rights relate to the actress's rights in connection with the Movie (and not to a generic exploitation of actors' image rights) and (ii) the splitting of the remuneration (60% for the artistic performance and 40% for the alienation of the Image Rights) supported the above conclusion. Because the artistic performance is entirely carried on in Italy, the full remuneration is taxable in Italy at a domestic tax rate of 30% rather than at the reduced tax treaty rate of 4% provided for royalties.

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