

[Logo] ANIA
National Association
of Insurance Firms

Rome - 19 February 2007

Ref: 0070 Circular
Car Ins.
Sickness Ins.
Information Systems
Taxes

TO ASSOCIATED COMPANIES

**Presidential Decree no. 223 dated 4 July 2006 amended
by law no. 248 dated 4 August 2006 -
Order of the Director of the Revenue Agency
of 19 January 2006 - Information communicated to the Taxation
Registry of sums paid to claimants**

Further to the circulars¹ in which we have made comment on the arrangements - of specific interest to the insurance sector - introduced Presidential Decree no. 223 of 4 August 2006, amended by law no. 248 of 4 August 2006, so that we can focus on the provisions of Art 7 of Presidential Decree no. 605 of 29 September 1973 as supplemented by Art 35 sub para 27 of the said decree which specified the obligation for companies, brokers and other operators of the insurance sector to communicate to the Tax Office, systematically and by data communication means, *with regard to insurance contracts in any branch*,

- the amounts paid,
- the fiscal code (or VAT no.) of the beneficiary,
- of the fiscal code (or VAT no.) of the of the bodies whose services have been evaluated for the purpose of quantifying the sum paid.

The arrangement in question applies with reference to the sums disbursed taking effect from 1 October 2006.

1

¹ Ref. 292 of 4 August 2006, 322 of 25 September 2006, 385 of 15 November 2006, 395 of 21 November 2006 and 33 of January last.

In the said arrangement it is specified that the data thus acquired must be used *as a matter of priority* in the act of confirmation performed in respect of bodies whose services have been evaluated for the purpose of quantifying the settlement amount; in such a case it is a matter of professional or entrepreneurial figures who have performed a service in respect of bodies due for compensation for losses sustained.

The Association did not however fail to make the point (see the parliamentary hearing of 11 July 2006) that the establishment of a further obligation to notify the Tax Office devolving upon the insurance companies, even though in line with the practice involving similar provisions devolving upon other sectors, is translated into additional costs for the sector rather than the merely possible collective benefit of reducing the areas of tax evasion attributable to bodies which become involved in the settlement process.

The communication of the sums paid in compensation in fact involves data which by definition does not extend to any index of fiscal capacity, contrary to what is said in respect of bodies whose services have been evaluated for the purpose of quantifying the sum paid.

We stress that the obligation introduced by the arrangements in question do not constitute an absolute novelty for the sector; in fact already for several years the companies have periodically been requesting data and information from the branch Offices of the Financial Administration, justified by them on the basis of the powers specified by Art. 32, first sub para, no. 5), of Presidential Decree no. 600 of 29 September 1973. However with the intention of providing the broadest possible collaboration with the Offices of the Financial Administration and in sharing the objective of countering the matter of evasion, we have constantly pointed out that the repetition of such requests - sometimes raised to our knowledge, on the basis of powers which fall outside the scope of the said Art. 32 of Presidential Decree no. 600 - obliges the companies to undertake tiresome manual searches in relation to bodies who do not have any contractual relationship with them or professional mandate from them.

Moreover in this argument it is worth adding that the said Financial Administration, in describing the expansion of the powers to make a request from the offices mentioned in no. 5) of Arts. 32 first sub para of Presidential Decree no. 600 of 29 September 1973 and 51 second sub para of Presidential Decree no. 633 of 1972 (see Revenue Branch Circular no. 32.E of 19 October 2006 Chap. IV para 7.3) recognised the necessity of avoiding in future requests for data and items which concern one specific obligation to communicate information to the Tax Office pursuant to Art. 7 eleventh and twelfth para, of Presidential Decree no 605 of 1973. This assertion must certainly also be considered pertinent to the communications in question, which are now expressly specified by the thirteenth sub para of Art. 7 mentioned above.

By Order of the Director of the Revenue Branch, no. 2007/ 9649 dated 19 January ult. (hereinafter Order), available on the Revenue Branch's site

and on that of ANIA, the content, procedures and terms of the transfers are described together with the specific techniques of format.

Parties under obligation

It is noted that in the first place Art. 7 of Presidential Decree no 605 of 1973 extends the obligation of communicating to “companies, brokers and other operators in the sector who disburse sums of money under any heading in respect of claimants.”

As regards this subject, item 1.2 of the Order clarifies that for the purpose of avoiding duplication of data to be supplied to the Financial Administration, brokers and other operators in the sector who disburse sums of money for or on behalf of insurance companies resident in Italy are in any case exempt from the obligation to communicate information.

On this point we maintain that the body ordinarily required to make such communication is the insurance company whilst every other body tasked with supplying sums in respect of the claimant (this can, for example, apply to accident management companies) *can* fulfil the obligation in a different way from the company, obviously by prior agreement with the latter.

We observe in this context that from the item just mentioned arises an obligation to communicate losses settled, for and on behalf of, non resident companies (for example UCI losses) and also in respect of the taxation representatives of companies operating in Italy on the basis of freedom of the provision of services. We consider that cases in which the claimant is a non-resident body of which the company does not have the fiscal code should, on the contrary, be excluded and no third party should become involved in the settlement procedure.

As far as loss management by coinsurance is concerned, it is preferable, given the reason for the order, for it to “trace” the action performed by the body whose services play a part in the quantification of the sum paid, and that the data relating to an indemnified loss should be notified in full by the leading company; otherwise every co-insurer should also communicate, over and above their own quota of compensation for damages, the data identifying the said body, which should be the same for every communication. It is recalled that previously in the past, (see our circ. no. 188 / 1992 Trib. dated 19 October 1992) the Tax Authority agreed to opt for such a procedure for communicating data and notices regarding insurance contracts.

Inasmuch as it concerns the procedure for direct indemnity pursuant to Arts 149 and 150 of the Insurance Code, it is stressed that the data to be notified should be known solely to the company which arranges the settlement of losses and therefore it is reasonable to assume that the burden of communicating falls on the said company.

The communication procedures explained above should prove more flexible for the bodies such as the leading coinsurance company and the company tasked with providing direct indemnity which have maintained a direct relationship with the claimant / beneficiary.

Content of information communicated

As mentioned above, Art. 7 of Presidential Decree no.605 requires the amount to be paid, the fiscal code (or VAT no.) of the beneficiary and the fiscal code (or VAT no.) of the bodies whose services have been evaluated for the purpose of quantification of the sum to be settled.

This having been said, we consider it opportune to provide some clarification on the data contained in the information communicated to the Tax Office.

A few companies have raised doubts about whether the fulfilment of the task in question could extend its effects to the data relating to the payment of sums settled under life insurance contracts, bearing in mind the fact that Art. 7 of Presidential Decree no.605 makes reference to insurance contracts *of any branch*.

To our knowledge, the obligation to communicate must be considered exclusive in respect of disbursements of capital and revenue arising from life insurances and capitalisation contracts, in consideration of the fact that the regulation makes reference to the disbursement of sums of money under whatever heading, in favour of “claimants”.

Under a techno- juridical consideration, in fact, the notion of claimant presupposes the existence of insurance cover by which the insurer is obliged to recompense the insured for a *loss incurred from an accident*, according to the definition of Art. 1882 of the Civil Code. However the case in point concerning the disbursement of a capital sum or proceeds by the insurer due to an event pertaining to human life appears therefore, for the purpose concerned, altogether different, whether it concerns death or else survival to a contractually determined date; in life insurance contracts in fact, a recipient of the sums concerned is a person (the beneficiary) who certainly cannot be defined as an injured party claimant since no loss has been sustained by him.

Added to this is the fact that the tax office is the recipient of data relevant to the life policies, whether via annual communication (policy holder, premium, duration etc) - relating to all contracts of insurance except civil liability car and additional peril - or via annual communication relating to the lists of physical persons who have paid life premiums.

We have had confirmation of the accuracy of the statement, even if informally, by the Revenue Branch, which moreover considers communication to be necessary in a case of additional peril (such as, for example permanent invalidity) and secondary accidents which presuppose an actual indemnity on the occurrence of a loss.

We must therefore arrive at the same conclusions with regard to policies stipulated against the risk of non-self sufficiency.

Bodies whose services have been evaluated for the purpose of quantifying the sum paid

As regards the appraisal of the action taken by the professional or entrepreneurial party who becomes involved in the settlement of the loss, we stress again that the reason for the arrangement is to be found in the requirement to render more incisive the action of countering evasion as a priority in the area of the services performed in respect of claimants who are the recipients of indemnities.

To our knowledge therefore, the appraisal of the data is restricted to bodies tasked *by the claimant* with performing a specific service (legal assistance, medical investigation, repair of damage etc), since clearly the action taken by professionals tasked by the company does not impinge on the size of the sum paid to the claimant and moreover the relevant data is available in the declaration of the tax substitutes. Similarly and for the same reasons the appraisal must not be performed in cases in which the service is subjected to a deduction by the company (for example, direct payment for a service to a medical professional).

On the basis of the above considerations it does not seem quite so clear if the communication of the sums paid is made in the event, not infrequently, where in the loss settlement file the action taken by any third party has not been recorded. For the sake of prudence we are of the view that the communication of the sums disbursed to the claimant ought to effected even is such a situation.

The Branch maintains in fact, that the disbursement of an indemnity constitutes in itself an element of interest to subsequent investigations which could be carried out, for example, by sending out questionnaires, including to individual claimants according to the new wording in Art. 32 of Presidential Decree no. 600 of 1973.

Data of the claimant and of a body whose services have been evaluated for the purpose of quantifying the sum paid

One aspect which the companies have brought to the attention of the Association and which has formed the subject of accurate reporting by us to the Branch concerns the poor accessibility of data (fiscal code and registry data such as residence, place and date of birth etc) regarding the claimant and the professional or entrepreneurial figures whose services have been evaluated within the scope of the procedure for settlement of the loss.

We have therefore proposed to the Branch to take due account of such difficulties, limiting the request for data in effect possessed by the companies to the deed of disbursement of sums to the claimant.

Our requests have found a partial acceptance, bearing in mind the fact that the layouts of the records attached to the Order specify the inclusion of personal data identifying the provider of the services evaluated for settlement as *an alternative* to the fiscal code; in other words the companies should include the aforesaid personal data only in the absence of the relevant fiscal code (*non* compulsory field).

However with regard to the party benefiting from the disbursement, the sole data requested is the fiscal code (compulsory field), whereas the personal identification data does not have to be notified in any circumstance.

Sums to be communicated

We should start by saying that the literal content of the provision under comment presupposes that the obligation to notify resides in the compensation to the claimant having taken place; consequently in the absence of settlement (for example in the event where a loss involves a sum less than the contractual excess or of a loss without outcome), the regulation is de facto inapplicable.

Moreover this situation appears to be confirmed by the structural layout of the records, where the record of the detail relating to the party providing services indicates the loss as identified in record 1 referring to the recipient of the sums.

However we are of the opinion that *where a loss has been settled* it would in any case be appropriate to communicate the performance of professional services of third parties of whom there is a trace (see report of the medical trustee of the opposing party: certifications from medical specialists etc) through the identification data of the provider, even though the sum concerned (for example a bill from the legal representative of the opposing party, the doctor, the physiotherapist etc) would not for any reason be reimbursed.

On the contrary, it is to be considered that the health services provided by facilities with expenses charged to the SSN [?] and participation of the insured by coupon should not be subject to communication, nor the costs sustained by purchasing medicines since they do not represent, except indirectly, professional services provided by third parties.

The obligation refers, to our knowledge, to the sums arising from the description of the loss at the end of the phase of loss settlement including partial settlement, rather than at the moment of payment, hence independently from the case where the payment might not subsequently be successfully finalised or might be for a different amount.

It is worth stressing that the wording of the regulation in question (“sums of money under any heading disbursed to claimants”) leads one to consider that the sums disbursed

ought to be communicated under the heading of compensation, including compensation in a specific form, indemnity, monetary revaluation, interest etc.

In particular in respect of “direct compensation” (where settlement of the loss takes the form of a *service in kind* as generally happens in the branches in respect of assistance, sickness, care and legal), the communication must cover *the data of the provider of services* if the invoice is addressed to the claimant. As indicated above communication will not be made when the company operates and pays the deductions direct, declaring the fee in form 770.

In substance, every time an invoice is submitted to the claimant, who because of a convention (for example, bodywork or fittings for trains / carriages) remains exempt from the associated cost, the data relating to such services performed by third parties shall also be communicated (unless the company already operates a deduction).

Furthermore on this point we maintain that the communication of the *sum* for the service provided ought to be limited solely to those cases in which the insurer produces appropriate accounting records, without prejudice to the necessity of taking into account the fiscal code (or VAT no.) and the identity data of the parties tasked by the claimant.

In other words, exclusively those sums materially verifiable by the insurance companies must be subject to communication as happens in the case of settlement against invoices addressed to the opposing party. As a consequence, to our knowledge, amounts identified solely at a standard rate such as a professional fee in the settlement are excluded and in any case all sums which cannot accurately be quantified through deficiencies in documentation or direct payment such as for example, those which can be withdrawn from “*omnia*” settlements when obviously the company does not produce an accounting record issued by the professional.

From all the evidence a different solution could give rise to the appraisal of incongruous numbers since they were calculated at a standard rate.

For the same reasons we consider that the data of parties (for example coach makers and other artisans) who have provided an estimate, bearing in mind the fact that the regulation makes reference to parties whose *services* have been evaluated for the purpose of quantification of the sum paid, should not be communicated.

Clearly the presentation of a simple estimate does not necessarily prove the performance of a service; a request for an estimate is not in fact binding for the purpose of implementation of such.

We consider finally, that when for the same loss several payments are made, whether in the course of the same year or in different years, communication shall be made cumulatively for payments made in every year.

Transfer procedures

On the basis of item 4 of the Order, communications concerning the data for the indemnifications contained in the layout of the records must be transferred by data communication via the Entratel system instead of, as specified in the original text of the presidential decree, by certified electronic post. In fact, in Art. 1 sub para 13 of Presidential Decree no. 262 of 3 October 2006 as amended by law no. 286 of 24 November 2006, Art 7 of Presidential Decree no. 605 was amended and the reference to the certified electronic post service was deleted.

We state in this regard that item 3.2 of the Order increases from 3 to 5 *megabytes* the capacity to be observed for the transfer by data communication of the archives containing the information to be transferred. We are striving for the enlargement to be extended to the other communications to be effected periodically to the Tax Office.

Terms

Item 4 of the Order sets 30 April for finalisation of supplying the data in question relating back to the previous year, a period which coincides with the expiry specified for the other annual communications to the Tax Office (see our ref. 104 of 4 April 2005).

In this regard the Branch circular no 28/E of 4 August 2006 commenting on the provisions made by Presidential Decree no. 223 clarified that the transfer of the said data is compulsory for sums disbursed taking effect from 1 October 2006 *even if they relate to settlements made and contracts stipulated beforehand.*

Penalties

Even though the legislation described above does not dwell upon the form taken by penalties, we consider it worthwhile to state clearly that the matter is governed by Art. 13 of Presidential Decree no. 605 as amended by Art. 20 of Presidential Decree no. 473 of 18 December 1997.

In particular we consider that the cases in point which are of interest to the companies in the sector should be covered by the second sub para of the said Art. 13, which specifies an administrative penalty of €206 to €5,164 for omitting to make the communications specified by Art. 7 of the same Presidential Decree, amongst which as stated, is now included the communication of the sums paid for losses. We recall that such penalties were reduce to a half in the event of incomplete or inaccurate communications.

As regards the communication in question moreover, the penalties specified in the first sub para, d) of the said Art. 13 - established at a figure of €103 to €2,065 - relating to the case in point of failure to state the fiscal code should not be applicable to the companies: in fact we consider that in a case of failure to

communicate the fiscal code on the part of claimant the latter should automatically be punishable by the penalty stated at the same amounts as contained in Art.13 first sub para c) of Presidential Decree no. 605.

We remain at your disposal for any further information and take this opportunity of proffering our best wishes.

Ref: Economic and Financial Management - Internal Revenue
Dr Gabriella D'Alessio Castellini
Tel: 06 32688613 Fax: 06 3210793
gabriella.dalessio@ania.it

Ref: Economic and Financial Management - Internal Revenue - Indirect Taxes
Dr Alessandro Longo
Tel: 06 32688620 Fax: 06 3210793
Alessandro.longo@ania.it

Giampaolo Galli

THE DIRECTOR GENERAL