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Italy: The New "White List" Paves the Way to Direct Investments from Former Offshore Jurisdictions

By Patrizio Braccioni, Bernadette Accili & Domenico Gioia

Historic Overview: The Long Path to the New White List

International trends on transparency and exchange of tax information have finally brought good news for foreign entity investments into the Italian financial market.

Following the closing of several new tax agreements, especially in the form of Tax Information Exchange Agreements ("TIEA"), and new protocols to existing Double Tax Treaties ("DTT"), Italy has finally updated its so called "white list", the list of countries who maintain an international tax agreement which provides for exchange of tax information.

The first historic "white list" was the Ministerial Decree of 4 September 1996 (of 20 years ago), which contained the list of countries which had concluded a DTT with Italy, which provided for an exchange of tax information. At the time, the largest missing country was, inter alia, Switzerland, which had concluded a DTT but without any provision on tax information exchange.

In the past two to three years the scenario had deeply evolved due to pressure from international organisations (OECD, IMF) and a new sensibility towards international tax avoidance and evasion arising among G-20 countries also in order to prevent events like those described in the so-called "Panama Papers".

In a relatively short time frame, former offshore jurisdictions have become cooperative and have engaged in exchanging tax information with foreign partners.

Due to this, they have suddenly shifted from "black lists" to "white lists", generally speaking for countries which normally caused suspicions among Tax Authorities to countries like the others.

This trend has also impacted Italy. A new "white list" was then expected because it should have been enacted in order to replace/update the previous one in accordance with the new tax agreements concluded by Italy.

This process has been finalized with the enactment of the new "white list", which technically is the Ministerial Decree of 9 August 2016, published in the Official Gazette of 22 August, which will enter into force on 6 September.

The Effects of the White List for Foreign Investors

In general terms, the main benefit that an entity resident in a white list country receives is that no withholding tax or substitute tax applies on interest payments from bonds issued by Italian corporates.

Such benefit is particularly relevant in respect of those countries who were reported in the "black list", generally former offshore jurisdictions like the Cayman Islands, Cook Islands, Turks & Caicos, Guernsey, Hong Kong, Gibraltar, British Virgin Islands, Switzerland and others.

Also, many Arab Countries like United Arab Emirates, Saudi Arabia, Kuwait, and Qatar are included in the list.

Investors from countries not reported in the "white list" used to suffer a withholding/substitute tax on interest up to 26%, which made direct investments into Italian debt almost prohibitive.

Now, the same investors (white listed foreign investors) will be able to invest directly into Italian bonds without suffering any Italian tax at all. The only burden, as per any other, even "old" white listed investor, will be of a documentary nature; that is, a certificate of tax residence will have to be provided to the Italian payor of interest or the Italian depositary bank in certain cases.

Further than this, there are at least four more favorable material effects of the new white list for investors.

The first is that the zero withholding/substitute tax also applies with respect to bonds issued in the ambit of securitisation transactions. Thus, this feature opens the way to direct investments in the very large Italian Non Performing Loans ("NPL") market, where securitisation is widely the path through which assets are dismissed.

The second is that no tax will apply on transfer of profits to institutional white listed investors who own more than 5% of Italian Real Estate Investment Funds.

The third is that white listed foreign investors will be able to benefit from tax advantages related to company capitalization (so called ACE Benefit—ACE stands for "Aiuto alla Crescita Economica", Aid to Economic Growth). Very briefly, if a company is capitalized to a certain extent, its tax basis will benefit from certain special tax deductions, thus reducing corporate income tax purposes. ACE is in fact applicable only if the shareholder is a resident in a white list country.

There is also a fourth, lighter but still important benefit from the white list, which is a potentially more relaxed analysis/evaluation of the foreign investor for anti-money laundering purposes.

Finally, the Italian Government also keeps the power to delete a country from the white list if the exchange of information proves to be ineffective.

Final Remarks

The release of the new white list represents a further step of opening Italian borders to foreign investments more widely, which is a trend we had underlined in previous Client Alerts and which seems to be moving ahead steadily.

This measure, connected with others like the new tax rulings on investments higher than 30 Million Euros, tax cooperative compliance, new and much more friendly interpretations of tax issues related to private equity investments, shows that the tax environment is much less “suspicious” in respect of foreign investments and has started a more collaborative approach.

Our view is that this should further improve in the future.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Milan lawyers:

Bernadette Accili
39.02.30414.208
bernadetteaccili@paulhastings.com

Patrizio Braccioni
39.02.30414.210
patriziobraccioni@paulhastings.com

Domenico Gioia
39.02.30414.252
domenicogioia@paulhastings.com