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Italy Enacts New "White List"

On August 9, 2016 the Italian Ministry of Finance issued a Decree ("the Decree")[1] amending the list of countries that are deemed to allow for an adequate exchange of information with Italy, the so-called "White List" set out in Ministerial Decree of September 4, 1996.

The Decree has substantially expanded the list of white-listed countries: there are now 123 jurisdictions[2] in the White List, compared to approximately 70 previously. Pursuant to Decree No. 147 of September 14, 2015, the White List is updated every six months and, in this regard, the Decree states that jurisdictions that should turn out not to allow, de facto, for an adequate exchange of information with Italy will be subsequently removed from the White List (e.g., in case of continued violations of the cooperation obligations provided for by the double tax treaties entered into with Italy).

Why is the new White List important?

Under Italian domestic tax laws, residents of (and institutional investors located in) one of the White List countries can benefit from favorable special tax regimes on the proceeds from certain investments made in Italy, generally resulting in an exemption from Italian withholding taxes or other taxes (e.g., so-called "substitute taxes") levied at source on income from capital and on capital gains. As mentioned, the new White List has added many new countries and territories, including some traditionally considered as "non-cooperative" and, as such, historically "black listed" for Italian tax purposes. These include, for example, the Channel Islands (e.g., Jersey and Guernsey), certain Caribbean islands (e.g., Anguilla, Aruba, Bermuda, Curacao, Cayman Islands, British Virgin Islands) and other European and non-European territories (e.g., the Isle of Man, Gibraltar, Liechtenstein, Switzerland, Hong Kong, and Taiwan). With the entry into force of the Decree, the number of foreign investors who can in principle benefit from the Italian withholding and other taxes exemptions provided for by the Italian tax statutes substantially increases. There are also some advantages for Italian tax resident persons that derive from a widened White List, as described below.

Which business sectors may be positively affected?

An industry sector that may be positively affected by the broadening of the White List is banking and finance. Indeed, subject to fulfilling certain procedural and substantive requirements, residents of (and institutional investors located in) the White List countries can benefit, *inter alia*, from the exemption from Italian withholding or substitute taxes, as the case may be, on:

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- Interest on bonds issued by the Italian Government, Italian banks, Italian listed companies and, under certain circumstances, Italian non-listed companies (otherwise subject to 26 percent substitute/withholding tax, save for any EU and double tax treaty exemption or tax rate reduction);
- Interest and other proceeds on notes issued by Italian securitization vehicles (otherwise subject to 26 percent substitute tax, save for any double tax treaty exemption or tax rate reduction);
- Capital gains deriving from the disposal of bonds, notes and other debt instruments issued by Italian companies (otherwise subject to 26 percent capital gain tax, save for any double tax treaty exemption);
- To the extent permitted by Italian regulations, interest paid on medium-long term loans granted to Italian enterprises limited to the ones granted by undertakings for collective investment (e.g., investment funds) that are set up in a White List country (otherwise subject to 26 percent withholding tax, save for any EU and double tax treaty exemption or tax rate reduction);
- Interest arising from deposits and accounts other than bank and postal accounts (otherwise subject to 26 percent withholding tax, save for any double tax treaty exemption or tax rate reduction); and
- Income from stock lending, repos and the issuance of guarantees (otherwise subject to 26 percent withholding tax, save for any double tax treaty exemption or tax rate reduction).

The new White List may also benefit the Private Equity, M&A and Real Estate sectors, primarily for those investments made through Italian undertakings for collective investment. In particular, always subject to fulfilling certain procedural and substantive requirements, residents of (and institutional investors located in) the White List countries can benefit, *inter alia*, from a tax exemption on:

- Proceeds deriving from investments in Italian undertakings for collective investment, e.g., investment funds (otherwise subject to 26 percent withholding tax, save for any double tax treaty exemption or tax rate reduction);
- Proceeds deriving from investments in Italian real estate funds limited to those received by undertakings for collective investment and pension funds established in a White List country (otherwise subject to 26 percent withholding tax, save for any double tax treaty exemption or tax rate reduction);
- Capital gains deriving from the disposal of units in Italian undertakings for collective investment and real estate funds (otherwise subject to 26 percent capital gain tax, save for any double tax treaty exemption); and
- Capital gains deriving from the transfer of non-qualified [3] equity interests in Italian companies (otherwise subject to 26 percent capital gain tax, save for any double tax treaty exemption).

Certain tax benefits for Italian taxpayers

The Decree also provides for some tax benefits for Italian taxpayers with connections with White List countries. One of these, for example, is the application of a reduced substitute tax (from 26 percent to 12.5 percent) on interest paid from bonds and similar securities issued by a government or other public authority of a White List country. Another benefit is the eligibility for the allowance for corporate equity (the so-called "ACE" or notional interest deduction) for equity contributions to Italian tax resident companies made by entities resident in a White List country.

Entry into force

The Decree does not set out a specific effective date. Under Italian general legal principles, it would enter into force 15 days after the date of its publication in the Official Gazette (i.e., on September 6, 2016). However, some scholars take a different interpretation and maintain that the Decree entered into force on the day of publication in the Official Gazette (i.e., August 22, 2016). Also, the Decree does not contain any provision on whether the effects of the amended White List apply to income accrued before (but not yet paid) by the entry into force of the Decree or, conversely, only to income accrued after such date. Absent an express clarification of the Italian Tax Authorities on this particular case, the latter approach should be prudently taken for the time being on the basis the interpretation given by the Tax Authorities in the past in analogues situations. [4] On both these open points, and on possible others as well, the Tax Authorities may publish guidance in the future.

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Marco Lombardi
Milan
+39.02.7645.4001
mlombardi@jonesday.com

Luca Ferrari
Milan
+39.02.7645.4001
lferrari@jonesday.com

Carla Calcagnile
Milan
+39.02.7645.4001
ccalcagnile@jonesday.com

Endnotes

1 The Decree was published in the Italian Official Gazette on August 22, 2016.

2 Albania, Alderney, Algeria, Anguilla, Argentina, Armenia, Aruba, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Belize, Bermuda, Bosnia and Herzegovina, Brazil, British Virgin Islands, Bulgaria, Cameroon, Canada, Cayman Islands, China (People's Rep.), Colombia, Congo (Rep.), Cook Islands, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Faroe Islands, Finland, France, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guernsey, Herm, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Ivory Coast, Japan, Jersey, Jordan, Kazakhstan, Kirghizstan, Korea (Rep.), Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mauritius, Mexico, Moldova, Montenegro, Montserrat, Morocco, Mozambique, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, St. Maarten, Sweden, Switzerland, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, Vietnam and Zambia.

3 A non-qualified interest is a participation not exceeding 25 percent - reduced to 5 percent for listed companies - of the capital, or 20 percent - reduced to 2 percent for listed companies - of the voting rights in the shareholders' meeting of the participated company.

4 *See*, for example, Circular Letter 61/E of December 31, 2003.

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