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The Italian Advance Ruling for New Investments

Enhancing Growth Through Legal Certainty

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Overview

- With Legislative Decree No. 147/2015, the Italian Government has introduced a tax ruling procedure for investors that are considering making new (and significant) investments in Italy
- The ruling procedure, accessible both to Italian resident and foreign investors, is intended to foster inbound investments by granting a definite and certain tax framework
- The procedure went live in May 2016. As at September 2018, according to the data released by the Italian tax administration, 36 ruling procedures had been completed totaling an investment value of € 20.3 billions

Who Can Apply?

Eligible investors include:

- Italian resident individuals, partnerships, companies or commercial trusts
- group of companies (*e.g.*, joint ventures or business consortia)
- non-Italian resident entities (including trusts), irrespective of whether such entities have a permanent establishment in Italy
- Italian or foreign collective investment vehicles subject to the supervision of a regulatory authority.

Resident individuals and entities not engaged in business activities can also file a ruling request provided that the planned investment results in (i) carrying out business activities or (ii) the equity participation in an Italian business entity

What Does It Cover?

The notion of “new investment” includes both new long-lasting business ventures and transactions involving the restructuring or the further development of existing businesses, regardless of whether the ventures/transactions are executed by means of an asset or share deal

The eligible investment must:

- be made within the Italian territory
- amount to at least € 20M, including all the financial resources needed, such as the cost of borrowing from third parties
 - in the aggregate, if made by a group
 - can be reached over a set period of time
- have a significant and long-lasting impact on employment levels
 - to be assessed on a case-by-case basis, taking into account the specific business carried out by the applicant
 - either by creating new job positions or by securing existing job positions (*i.e.* preventing termination or access to lay-off schemes) or outsourcing the work to third-party contractors

What Is The Objective?

The procedure offers the opportunity of a comprehensive dialogue with the Italian tax authorities. Eligible investors, by means of a single advance ruling, may achieve certainty on:

- the tax treatment of the planned investment
- the entitlement to access special tax regimes
- the disapplication of anti-avoidance provisions (*e.g.*, provisions limiting tax allowances)
- the fact that the planned investment is not deemed to be abusive for tax purposes
- the existence of a permanent establishment in Italy both for income tax and VAT purposes

Transfer pricing, however, is outside the scope of the Advance Ruling for New Investments. Hence, interested taxpayers must submit an application *via* the ordinary APA procedure

What Is The Info To Be Produced?

The application, *inter alia*, must contain:

- a detailed description of the investment plan, together with the indication of its value and expected impact on employment levels (including methods used for the calculations thereof)
- the tax treatment that, according to the applicant, should apply to the investment
- an illustration of the expected tax charges and, hence, the related impact for the Italian Treasury
- supporting documentation (commercially sensitive information can be sanitized)

What Is The Timing?

The application must be submitted before the deadline for the presentation of the income tax return or for any other tax obligation pertaining to the envisaged investment plan

The Italian tax authorities must issue a response within 120 days from the submission of the application (or, should additional information be requested, within 90 days from the submission of such documentation). If the tax authorities fail to respond within this deadline, the interpretation proposed by the applicant is deemed to be accepted

The response is binding on the Italian tax authorities and cannot be repealed or amended. Furthermore, taxpayers conforming to the ruling can access the Italian cooperative compliance program irrespective of the turnover threshold



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