

Breaking news: Italian Government finally reforms the tax regime of investment funds investing in securities

With a last-minute amendment to a piece of legislation currently receiving approval before the Italian Parliament, the Italian Government has introduced a reform in the tax regime of investment funds investing in securities (the new regime does not affect real estate investment funds). The introduction of the new regime follows the intense lobbying by the industry associations. The Parliament is expected to approve the Government's proposal; if so the new regime will apply as of 1 July 2011.

Under the current regime,

- **Italian investment funds** and **Luxembourg investment funds** authorized for placement in Italy are subject to a 12.5% substitute tax on the yearly increase of the net asset value; any distribution to individual investors is then exempt from any tax, whereas eligible non residents are entitled to a refund corresponding to the substitute tax paid the fund;
- **EU-harmonised investment funds** are not subject to the 12.5% substitute tax on the accrued increase of net asset value; the income received by Italian individual investors upon distribution (or included in the difference between the value of redemption or disposal of the investment and the weighted average purchase/subscription price of the investment) is subject to a final withholding tax at 12.5% rate;
- **Non EU-harmonised investment funds whether or not established in the EU** are not subject to the 12.5% substitute tax on the accrued increase of net asset value; the income received by Italian individual investors upon distribution (or included in the difference between the value of redemption or disposal of the investment and the weighted average purchase/subscription price of the investment) is subject to personal income tax at progressive rate up to 43% rate plus regional surtax, at a rate generally between 0.9% and 1.5%, and municipal surtax, at a rate generally between 0% to 0.5%.

Hence, the Italian investment funds industry has so far lobbied for a reform considering that any investment in investment funds established in Italy is in principle penalised in respect to investments in foreign funds as income and gains are subject to tax on an accrual basis instead of on a cash basis.

The draft legislation intends to harmonize the current tax treatment applicable to Italian investment funds to that applicable to collective investment vehicles established in a EU member state or in a EEA member state.

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Under the new regime, the following collective investment vehicles:

- Collective investment vehicles established in Italy;
- Collective investment vehicles investing in securities and established in accordance with Directive 2009/65/EC, established in a EU member state or in a EEA member state allowing for an adequate exchange of information for tax purposes;
- Collective investment vehicles other than the above and established in a EU member state or in a EEA member state allowing for an adequate exchange of information for tax purposes and subject to regulatory control in their jurisdiction of establishment would not be subject to any tax on the accrued increase of net asset value.

The income distributed to Italian individual investors (or included in the difference between the value of redemption or disposal of the investment and the weighted average purchase/subscription price of the investment) is subject to a final withholding tax at 12.5% rate applied by fund management company (SGR), the open-end investment company (SICAV) or the Italian resident intermediary intervening in the payment.

Income from investments in investment vehicles other than the above will continue to be subject to income tax at progressive rates up to 43%, plus regional and municipal surtax, in the hands of Italian individual investors.

Under the draft legislation, the investments in qualifying EU non-harmonised undertakings will be not less favourably than the investment in Italian or EU UCITS-harmonised undertakings. The new treatment will remove many of the disincentives that have long discouraged Italian individuals, non commercial entities (such as banking foundations) and exempt entities from investing in the non-harmonized collective investment undertakings and that are often addressed through structured products, wrappers and other complex structures.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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