ITALIAN TAX AUTHORITIES RATIFY TAX REGIME OF CORPORATE EQUITY-ACCOUNTED HYBRID BONDS

In a new ruling response (No. 291 of 31 August 2020), the Italian tax authorities confirmed that perpetual, equity-accounted, subordinated bonds may be treated as "bonds" for tax purposes regardless of their accounting as equity, thus allowing:

- deduction of interest expenses under ordinary rules (i.e. as if the instrument was accounted as a liability and interest as a cost in the P&L account);

- eligibility for the withholding tax regime applicable to senior bonds issued by Italian corporates (under LD 239/96), thus allowing for a wide exemption from withholding tax for non-resident investors; to this end, the key feature is the condition to fully repay principal upon redemption of the securities (i.e. the treatment might not apply to instruments not providing for an unconditional obligation for the issuer to repay full principal, such as instruments that can be permanently written down and/or converted into shares mandatorily or at the discretion of the issuer).

Also not adversely affecting the tax treatment as "bonds" are subordination and the possibility to defer interest at the discretion of the issuer.

The ruling constitutes a welcome confirmation of the tax regime of corporate hybrid bonds, confirming Clifford Chance's position on the subject, thus clearing the last remaining uncertainties on the tax regime of instruments whose popularity has increased significantly because of the pandemic.

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