



Italy: Recent clarifications on the exemption requirements for proceeds from Italian REIFs

Tax Alert

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On 23 October 2018 the Italian Revenue Agency published two statements of practice, in the form of tax rulings. These statements of practice describe the exemption requirements for proceeds from an Italian real estate investment fund (REIF), in the specific case where unitholders are foreign partnerships that indirectly own the REIF units through fully owned vehicles.

Legislative background

According to Italian civil law, an investment fund is a closed-end REIF if two-thirds of its assets are represented by real estate, real estate rights, equity interests in real estate companies, and/or shares/units of other Italian or foreign REIFs.

Closed-end REIFs set up in Italy and managed by an authorized management company ("SGR") are exempt from Italian corporate income taxes, provided that both of the following regulatory requirements are met.

- i. The fund makes collective investments for a plurality of unitholders (or for a single unitholder, such as a pension or investment fund, representing a plurality of interests).
- ii. The SGR manages the fund 'on behalf and for the benefit of the fund's unitholders, but autonomously and independently of them'.

According to the law, the two regulatory requirements are deemed to be met if the fund qualifies as an institutional one, i.e. when its units are held exclusively by one or more of the following institutional investors resident in Italy or in a cooperative jurisdiction⁽¹⁾: a) states and state-owned entities; b) collective investment vehicles (CIVs); c) social security institutions; d) insurance companies; e) banks and financial intermediaries; f) vehicles more than 50 percent owned by the persons/entities listed under the preceding letters.

Therefore, based on point f), the exemption automatically applies even when the above institutional investors hold the REIF units indirectly through one or more vehicles, set up in Italy or in another cooperative jurisdiction.

(1) These are the EU Member States and other states that allow an adequate exchange of information with Italy, listed in a Decree of 4 September 1996.

Proceeds received by a foreign unitholder from an Italian REIF are subject to a final WHT at the standard 26 percent rate.

Under Italian law, there is an exemption from WHT for proceeds distributed to certain foreign resident investors, namely:

- a) pension funds or CIVs set up in a cooperative jurisdiction;
- b) international bodies and organizations established in accordance with international agreements ratified in Italy (e.g. the ECB, OECD, EU);
- c) foreign central banks or bodies that invest the public reserves of their country (such as sovereign funds), wherever resident.

Exemption is available also when the units are held through fully owned middle companies, resident in a cooperative jurisdiction, even if it is not the jurisdiction of the unitholder⁽²⁾.

The Italian tax authorities have clarified⁽³⁾ that, in order for proceeds to benefit from this exemption:

- i. the foreign CIV must, according to the laws of the state where it is set up, meet the same substantial requirements and have the same investment purpose as an Italian CIV (i.e. plurality of investors and independence of the management company);
- ii. the foreign CIV or its management company must be subject to supervision⁽⁴⁾.

The letter of authorization to set up the fund, stating the law (e.g. the UCITS IV EU Directive) which requires such supervision, is deemed to be sufficient proof that the second requirement is met. Alternatively, in cases where the supervisory authorities of a foreign state do not issue a specific attestation, the Italian Revenue Agency admits that the 'subject to supervision' requirement is satisfied if supervision can be inferred from public sources, e.g. by publication on the website of the Securities Exchange Commission (SEC)⁽⁵⁾.

(2) See Resolution no. 54 of 2013.

(3) See, for instance, Italian Revenue Agency Notice no. 2 of 2012.

(4) See Resolution no. 54 of 2013.

(5) See Resolution no. 78 of 2017, commented in our [Tax Alert of 25 July 2017](#).

Facts

Tax Ruling no. 43 regards Alfa, a limited partnership set up in the Cayman Islands, which are included in the list of cooperative jurisdictions. Alfa is managed by an advisor resident and subject to SEC supervision in the US and is controlled by a body, resident in another cooperative jurisdiction, that invests the public reserves of its country. Alfa indirectly owns 100 percent of the units of an Italian REIF through, among others, a fully owned company resident in Luxembourg.

Similarly, Tax Ruling no. 44 deals with ZZZ funds, three funds set up in cooperative jurisdictions (two in the US and the third in Luxembourg). The three funds are managed by companies resident in the US and in Luxembourg and are subject to supervision by the SEC and CSSF. Moreover, one of them is ultimately controlled by a body, resident in a cooperative jurisdiction, that invests the public reserves of its country. The ZZZ funds indirectly own 100 percent of a company resident in Luxembourg, which, in turn, owns 100 percent of the units of an Italian REIF.

In both cases, the Luxembourg company asked the Italian Revenue Agency whether the ultimate investor (i.e. Alfa and the ZZZ funds, respectively) may benefit from the exemption for proceeds from the REIF units.

The Agency confirms that the exemption applies, for the following reasons.

As the ultimate investor is an institutional investor (i.e. a body that invests the public reserves of its state) set up in a cooperative jurisdiction, and as the intermediate vehicles are 100 percent held, the Italian REIF is deemed to be institutional and thus automatically exempt from corporate income taxes. There is no need to verify whether it fulfils the 'plurality of unitholders' requirement.

Moreover, the foreign funds: (a) have the same investment purpose as an Italian CIV; (b) are set up in a cooperative jurisdiction; (c) are managed by advisors which are resident and subject to supervision in a cooperative jurisdiction, and (d) indirectly own the REIF units through fully owned vehicles set up in a cooperative jurisdiction.

KPMG's observations

These statements of practice are interesting because they provide a comprehensive description of the requirements that foreign investors must fulfil in order to benefit from the tax exemption for proceeds from Italian REIF units and because they apply these principles in two real-life cases.

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