



Italy: Allowance for Corporate Equity (ACE) - New anti-avoidance measures

Tax Alert

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Offices

Milan

Via Vittor Pisani 27, 20124
T: +39 02 676441 - F: +39 02 67644758

Ancona

Via I° Maggio 150/a, 60131
T: +39 071 2916378 - F: +39 071 2916221

Bologna

Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711 - F: +39 051 4392799

Florence

Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961 - F: +39 055 2619666

Genoa

P.zza della Vittoria 15/12, 16121
T: +39 010 5702225 - F: +39 010 584670

Naples

Via F. Caracciolo 17, 80122
T: +39 081 662617 - F: +39 081 2488373

Padua

Piazza Salvemini 2, 35131
T: +39 049 8239611 - F: +39 049 8239666

Perugia

Via Campo di Marte 19, 06124
T: +39 075 5734518 - F: +39 075 5723783

Pescara

P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479 - F: +39 085 4429900

Rome

Via Adelaide Ristori 38, 00197
T: +39 06 809631 - F: +39 06 8077459

Turin

C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166 - F: +39 011 8395865

Verona

Via Leone Pancaldo 68, 37138
T: +39 045 8114111 - F: +39 045 8114390

The Ministry of Economy and Finance Decree of 3 August 2017⁽¹⁾ (the 'Decree') extends the anti-avoidance rules applicable to the Allowance for Corporate Equity ('ACE') regime, with effect from fiscal year 2018.

Background

Since fiscal year 2011, Italian enterprises (and permanent establishments of non-resident enterprises) have been able to benefit from ACE, which is calculated by multiplying net equity increases since 31 December 2010 by a nominal rate of interest. The equity increases that qualify for ACE purposes include those resulting from (i) cash contributions, (ii) waivers of amounts owed by a company to its shareholders, and (iii) undistributed profits set aside to freely disposable reserves. The equity increases must be net of decreases resulting from distributions or assignments of shares to shareholders and certain decreases that have to be made for anti-avoidance purposes. The allowance is deducted from the company's net taxable income and if, in a given year, it exceeds the company's net taxable income, the surplus can be carried forward indefinitely.

The ACE rates, set at 4.5 percent for 2015 and 4.75 percent for 2016, were recently reduced to 1.6 percent for 2017 and 1.5 percent for 2018 onwards⁽²⁾.

The new Decree⁽³⁾ aims, among other things⁽⁴⁾, to redefine the ACE anti-avoidance rules, in order to exclude duplications of the ACE benefit within a group of enterprises, especially when intra-group transactions involve non-residents.

(1) The Decree was published in the Official Gazette of 11 August 2017.

(2) See our [Tax Alert of 23 June 2017](#).

(3) The Decree, which replaces the former ACE implementing decree of 14 March 2012, was issued under article 13-bis of Law Decree no. 244/2016.

(4) The Decree aims, primarily, to align the ACE regime with the new local GAAP applicable from 2016. It also updates the ACE rules for partnerships and individuals in compliance with the new measures contained in the 2017 Budget Law.

The new ACE anti-avoidance rules

First of all, the Decree extends the definition of the 'group' to which the anti-avoidance measures apply, by including private individuals and non-resident companies.

The Decree reconfirms the abusive transactions that are listed in the former implementing decree and that trigger a corresponding decrease in the ACE base; however, these transactions now have to be considered within the context of the wider group. The Decree also introduces certain amendments. As a result, the anti-avoidance rules apply to the following intra-group transactions between both Italian and non-Italian related parties.

- Cash contributions to group companies, made from 2011.
- Acquisitions of controlling interests from other group companies.
- Acquisitions of going concerns (i.e. businesses or branches of business) from other group companies.
- Financing provided, as of 1 January 2011, to other group companies.

Moreover, the anti-avoidance rules continue to apply to cash contributions from taxpayers (even outside the group) that are domiciled in a country not on the list of countries that allow an adequate exchange of information with Italy⁽⁵⁾. In this case, the Decree establishes that the decrease in the ACE base must be divided between the companies receiving the cash contribution. It is also necessary to adopt a look-through approach when examining the ownership chain to see whether there are any companies in countries not on the above list. However, there are two exceptions to this.

- In the case of publicly traded companies, only the controlling shareholders (if any) need to be considered.
- In the case of regulated investment funds established in countries that allow an adequate exchange of information with Italy, there is no need to consider the investors.

(5) The report accompanying the Decree refers to this list as the 'ACE White List' and clarifies that it includes those countries which already had an effective exchange of information agreement in force with Italy on 1 January 2011. Therefore, the list contained in the Decree of 4 September 1996 (recently amended - see our [Tax Alert of 21 April 2017](#)) cannot be taken as is, for ACE purposes.

The taxpayer can disapply the anti-avoidance rules listed above by filing a tax ruling application with the Italian Revenue Agency, in which it must demonstrate that there is no duplication or multiplication of ACE benefits within the group. In the case of cash contributions from taxpayers domiciled in countries not on the list of countries that allow an adequate exchange of information with Italy, the taxpayer must provide evidence that the contributions ultimately come from a country on that list.

The Decree also states that profits set aside to reserves do not increase the ACE base if they arise from capital gains from contributions of a going concern recorded in the profit and loss account. However, as this is not a proper anti-avoidance rule it cannot be disapplied through a ruling.

Effective date

The new rules will come into effect from the first fiscal year after the entry into force of the Decree, i.e. as of 2018 for calendar-year taxpayers. However, intra-group transactions subject to the anti-avoidance rules may have occurred in previous years and taxpayers must therefore begin to monitor their group transactions now and, if necessary, file for a tax ruling.

Document prepared and written by Paola Sella

Contacts

KPMG, Tax & Legal

Fabio Avenale

Partner,
Tax Professional Practice
T: +39 011 883166
E: favenale@kpmg.it

kpmg.com/it

kpmg.com/socialmedia

kpmg.com/app



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