



Italy: measures implementing the new tax ruling for substantial investments

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Legislative Decree no. 147/2015, encouraging the growth and internationalization of companies⁽¹⁾, introduced a new form of tax ruling for enterprises that intend to make substantial investments in Italy, i.e. investments of no less than €30 million.

In brief, the new procedure aims to provide such enterprises, whether residents or not, with a reliable and stable tax framework, based on their investment plan. The investor must send an application to the Italian Revenue Agency (the 'Tax Agency'), together with a business plan detailing, among other things, the size of the investment, how and when it will be made, and the expected number of new hires. The Tax Agency will send a written reply within 120 days (extended by 90 days, should additional information be required), covering the overall direct and indirect tax treatment, including any potential tax-avoidance risks.

Legislative Decree no. 147/2015 established that implementation rules would be introduced by the Ministry of Economy and Finance and by the Director of the Tax Agency, and that the new ruling system would come into effect from the date of the statement of practice issued by the latter.

On 12 May 2016, the Ministry's implementation decree⁽²⁾ was published in Official Gazette no. 110 and, on 20 May 2016, the Tax Agency published Statement of Practice no. 77220, which introduces further implementation measures and, in particular, identifies the offices in charge of handling this new ruling process. The Tax Agency also issued, on 1 June 2016, a 45-page circular (Circular no. 25), providing further clarifications.

The main features of the new procedure, as described in the implementation decree and in the statement of practice and circular, are summarized below.

(1) The Decree, which was enacted on 22 September 2015 via publication in Official Gazette no. 220, has been in force since 7 October 2015 (see our [Tax Alert of 23 September 2015](#)).

(2) The Ministerial Decree was issued on 29 April 2016 by the Italian Ministry of Economy and Finance.

Who and what is eligible for the procedure

The following taxpayers may apply for a ruling if they are planning to make certain types of investment in Italy.

- Residents (individuals, partnerships, companies or other entities) whose main activity is a business activity.
- Resident non-business organizations (as well as private individuals) that invest in a new business activity or in the net assets of an Italian enterprise (via an asset deal or a share deal).
- Non-resident companies and entities, with or without a permanent establishment in Italy, and trusts.
- Resident and non-resident collective investment vehicles, if subject to supervision.
- Groups of enterprises (including joint ventures).

The planned investment must:

- be for a certain time (even more than a year);
- involve, for example, a new start-up or business expansion, diversification of production, business restructuring to prevent or overcome a business crisis, or share deal;
- have a significant impact on employment (by boosting the workforce or saving jobs) in the relevant industry;
- amount to at least €30 million, taking into account all the financial resources (including borrowing from third parties) needed by the enterprise/group to implement the investment plan.

Application process

The application for a tax ruling must be submitted to the following Tax Agency office (in Rome): *Direzione Centrale Normativa, Ufficio Interpelli Nuovi Investimenti*.

The application (in Italian only) may be submitted by hand or recorded-delivery post. In this case, a copy of the application and enclosed documentation must also be filed in an electronic format. Alternatively, the application may be submitted via certified email or other electronic service provided by the Tax Agency. If the investor is a group of enterprises, a member of the group must file the application on behalf of the group, under a power of attorney.

The application must contain the following.

- a) The applicant's details (name of company, registered office or tax domicile, tax code and VAT number; the national contact person, other than the company, who can receive information regarding the procedure; details of the legal representative).
- b) A detailed description of the business plan, especially: the size of the investment, which must be no lower than €30 million, and how it was computed; how and when the investment will be made; its expected impact on employment levels and its direct effects on the Italian tax system.

- c) The tax rules that the taxpayer is asking the Tax Agency to interpret or (if they are anti-avoidance measures) disapply or (if they introduce favorable tax regimes or procedures) apply; or the tax rules that make it necessary to ascertain whether the transactions involved in the investment plan constitute tax abuse.
- d) A clear statement of the tax treatment that the investor believes to be correct for the investment plan and for each step of its implementation.

The application must be signed by the applicant or by its legal representative. Any documents that may be relevant for the purposes of answering the application must be enclosed. It may be written in Italian, English, French, German or Spanish.

The application will not be accepted if:

- any of the information indicated under a) and b) above is missing and the applicant does not provide it within 30 days;
- the application is not submitted in advance, i.e. before the deadline for filing a tax return or for complying with other tax obligations connected with the transactions addressed in the application;
- the application concerns issues for which an international ruling request must be submitted (see our [Tax Alert of 30 March 2016](#)) - except queries about the existence of a PE in Italy;
- the taxpayer has already obtained a ruling on the same issue;
- the taxpayer is aware of an inspection/investigation that started before the filing of the application on certain issues addressed in the application.

Effects of the ruling

The Tax Agency must send a written ruling within 120 days (extended by 90 days, should additional information be required) of the date on which it receives the application. If it does not answer by that deadline, this means that it agrees with the interpretation or approach proposed in the application. The ruling is binding on the Tax Agency with respect to the investment plan described in the application and remains in force until the underlying circumstances change.

Tax assessments that do not comply with the Tax Agency's ruling are null and void. Any tax office intending to verify the position of a taxpayer that has obtained a ruling must liaise with the office that has issued the ruling before releasing an inspection report.

The competent offices (usually the local offices) of the Tax Agency may verify that the taxpayer complies with the ruling and continues to fulfil the requirements.

Investors who comply with the ruling may have simplified access to the cooperative compliance regime (see our [Tax Alert of 10 September 2015](#)), i.e. if they fulfill the other requirements, they may apply for the cooperative

compliance regime regardless of the amount of their turnover/revenues.

Any aspects not expressly regulated by the implementation decree are subject to the rules on standard tax rulings (see our [Tax Alert of 21 October 2015](#)). For instance, a taxpayer cannot generally appeal a ruling (e.g. a ruling that an anti-avoidance measure still applies to the transactions involved in the investment plan).

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