



Italy: transfer pricing requirements for the investment manager exemption

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Further to the implementation of the provision related to the Investment Management Exemption (“IME”) issued on 29/12/2022 (see our Tax Alert newsletter dated 25 January 2023)¹, the Italian tax authorities issued on 28/2/2024 Transfer Pricing Guidelines (the “Guidelines”) to be followed by investment managers based in Italy of a foreign investment vehicle either as 1) a subsidiary or 2) a permanent establishment of a non Italian resident entity (1 and 2 are collectively referred to as “Italian investment managers” or “IIM”).

Based on the Guidelines, services provided by IIM can be identified in two categories:

- i. Investment management services;
- ii. Services that are connected and instrumental to those of Category i.

The Categories of services are recalled in the Guidelines as follows:

- i. Investment management services, provided in the name or on behalf of the investment vehicle or its subsidiaries. These services include the following individual or combined activities:
 - a. investment management activities: such as purchase, sale or trading of financial instruments, including derivatives, share/quota holdings and receivables, based on a predetermined investment policy;
 - b. provision of services related to the administration of fund raised: such as the provision of legal and accounting services referred to the management of assets, diffusion of information to clients, evaluation and pricing related to the raised funds, verifying compliance with applicable legislation, keeping the investors’ register, distributing proceeds, issuing and redemption of units / shares, settlement of contracts;
 - c. marketing: such as advancing any offer, making invitations to offer or sending promotional messages to investors, in any form, directly or indirectly, with the purpose of solicitation to subscribe or purchase shares/quota.

- ii. Services related and ancillary to investment management services, provided in the name or on behalf of the vehicle or its subsidiaries. These might include the following individual or combined services:
 - a. activities of promotion and development of investment management services, e.g. investment advice;
 - b. activities ancillary to investment management, e.g. economic and financial studies, research and analyses; the processing, transmission and communication of economic and financial data and information; the preparation and management of IT services or data processing services;
 - c. administration of business properties; administrative/accounting services.

For Category i, which includes the activities that are, typically, the most value-adding within the asset management industry, the Guidelines define a hierarchy of methods, where the Comparable Uncontrolled Pricing (“CUP”) is the most preferable. Should the accurate delineation of the transaction, facts and circumstances and the comparability analysis prove that the entities involved in the intra-group transaction i) share the assumption of the same economically significant risks or ii) assume, on an individual basis, different economically significant but still strictly connected risks, and the CUP method cannot be reliably applied, the Profit Split Method must be considered as the most appropriate method, having regard to the contribution made by each party. If it is adequately documented that neither of the two methods can be reliably applied, it is preferable to select, as the most

appropriate method, one of the other methods described by the OECD Guidelines but excluding those relying on financial indicators based on costs. However, if the accurate delineation of the transaction, facts and circumstances and the comparability analysis documents that the activities performed (under the Category 1) do not involve the assumption of economically significant risks, any of the other OECD methods can be evaluated.

For Category ii, basically all the OECD methods are acceptable, unless they prove to imply the assumption of economically significant risks, in which case the same logic and hierarchy of the Transfer Pricing methods identified for the Category 1 activities must be considered.

The Guidelines further clarify that by “*appropriate documentation supporting the arm’s length remuneration*” they refer to TP Documentation prepared in accordance with Italian Revenue Agency Regulation no. 360494/2020 on Transfer pricing.

(1) For a more complete description of the Rule reference can be made to our Newsletter dated 25 January 2023: “*a safe harbour (“IME”) has been introduced so that no permanent establishment (PE) will arise in Italy, triggering domestic tax rules, when a non-resident investment vehicle operates in Italy through an independent asset manager. In particular, article 162 IITC, which defines a PE for tax purposes, has been amended [...] If the following conditions are met, the investment manager will be considered independent of the foreign enterprise and, since no agency PE will arise, the foreign enterprise will be exonerated from the application of article 162: [...] d. A resident investment manager (or the Italian PE of the non-resident enterprise) that provides services under agreements with other entities in the same group must receive, for services performed in Italy, a remuneration supported by appropriate documentation*”.

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