Italy: Recent amendments to the White List

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 White List (so-called by the Italian Tax Agency) is a list of countries that allow an adequate exchange of information with Italy. It is contained in a Ministerial Decree of 4 September 1996, which should be updated every six months(1).

The Ministerial Decree of 23 March 2017(2) has added the following countries to the White List:

1) Andorra
2) Barbados
3) Chile
4) Monaco
5) Nauru
6) Niue
7) Saint Kitts and Nevis
8) Saint Vincent and the Grenadines
9) Samoa
10) Uruguay
11) Vatican City State.

The White List had already been significantly amended by a Ministerial Decree of 9 August 2016(3), which:

a) added 50 new countries (e.g. Switzerland, Liechtenstein and Hong Kong);

b) introduced a rule that countries and territories will be removed from the list, by means of a decree, if they repeatedly neglect their duties to ensure administrative cooperation between their tax authorities and consequently do not allow an adequate exchange of information with Italy.

(1) See article 11 of Legislative Decree no. 239/96, introduced by Legislative Decree no. 147/2015, aimed at growth and internationalisation.

(2) The Decree was published in Official Gazette no. 78 of 3 April 2017.

(3) The Decree was published in Official Gazette no. 195 of 22 August 2016.

The new additions to the White List follow the entry into force of (i) a double tax agreement with Italy, containing an article on the exchange of information which is compliant with article 26 of the OECD Model (this is the case of Hong Kong and Chile, for instance) or (ii) an exchange of information agreement with Italy, such as a TIEA (the case of Andorra, Barbados, the Cayman Islands, Jersey and Uruguay) or (iii) binding international agreements that require administrative cooperation with the Italian tax authorities, such as agreements based on the Common Reporting Standard or on Directive 2011/16/EU or on special agreements with the EU (the case of Liechtenstein and Monaco).

As a result of the above amendments, the following 134 countries are currently on the White List[4].

Albania	Bulgaria	Finland	Japan	Montserrat	Senegal	Tunisia
Alderney	Cameroon	France	Jersey	Morocco	Serbia	Turkey
Algeria	Canada	Georgia	Jordan	Mozambique	Seychelles	Turkmenistan
Andorra	Cayman Islands	Germany	Kazakhstan	Nauru	Singapore	Turks and Caicos Islands
Anguilla	Chile	Ghana	Kirghizstan	Netherlands	Slovak Republic	Uganda
Argentina	China (People's Rep.)	Gibraltar	Korea (Rep.)	New Zealand	Slovenia	Ukraine
Armenia	Colombia	Greece	Kuwait	Nigeria	South Africa	United Arab Emirates
Aruba	Congo (Rep.)	Greenland	Latvia	Niue	Spain	United Kingdom
Australia	Cook Islands	Guernsey	Lebanon	Norway	Sri Lanka	United States
Austria	Costa Rica	Herm	Liechtenstein	Oman	St. Kitts and Nevis	Uruguay
Azerbaijan	Croatia	Holy See (Vatican City State)	Lithuania	Pakistan	St. Maarten	Uzbekistan
Bangladesh	Curacao	Hong Kong	Luxembourg	Philippines	Saint Vincent and the Grenadines	Venezuela
Barbados	Cyprus	Hungary	Macedonia	Poland	Sweden	Vietnam
Belarus	Czech Republic	Iceland	Malaysia	Portugal	Switzerland	Zambia
Belgium	Denmark	India	Malta	Qatar	Syria	
Belize	Ecuador	Indonesia	Mauritius	Romania	Taiwan	
Bermuda	Egypt	Ireland	Mexico	Russia	Tajikistan	
Bosnia and Herzegovina	Estonia	Isle of Man	Moldova	Samoa	Tanzania	
Brazil	Ethiopia	Israel	Monaco	San Marino	Thailand	
British Virgin Islands	Faroe Islands	Ivory Coast	Montenegro	Saudi Arabia	Trinidad and Tobago	

(4) The Decree of 23 March 2017 does not indicate a specific effective date. From the Ministry of Finance's website, however, we can infer that it came into force on the date of its publication in the Official Gazette (3 April 2017). The same principle should apply to the amendments introduced by the Decree of 9 August 2016, apparently in force since 22 August 2016.

Functions and status of the Italian White and Black Lists

The White List is cited in several Italian tax rules on the cross-border payment of income (mainly financial income). Some examples of these rules are given below.

— Capital gains on non-qualifying[5] shares in a resident non-listed company are exempt from 26 percent substitute tax if the seller is a resident of a White-List country.

— If the beneficiary is a resident of a White-List country, interest and similar proceeds are - on certain conditions – exempt from 26 percent withholding tax when they accrue on, *inter alia*: Italian treasury bonds; bonds, bond-like securities and commercial paper issued by Italian banks or by Italian listed companies; notes issued by securitisation vehicles (as defined by Law no. 130/1999).

— Proceeds from investment in an Italian real estate investment fund (REIF) are exempt from 26 percent withholding tax if the beneficiary is a pension fund or collective investment vehicle established in a White-List country.

— Proceeds from investment in an Italian collective investment vehicle (other than a REIF) are exempt from 26 percent WHT if the beneficiary is a resident of a White-List country.

Moreover, the White List is cited in other rules on the taxation of corporations, such as the rule on the tax basis of assets and liabilities of companies that move their tax residence to Italy[6].

Italy also has various 'Black Lists' (as referred to by the Tax Agency), of which the main ones are described below.

1) The Black List contained in the Ministerial Decree of 4 May 1999 regards individuals. Under article 2 of the Italian Income Tax Code, individuals who move their residence to one of the countries on the Black List are still deemed to be resident in Italy for tax purposes, unless they can prove the contrary. This Black List is still in force. It includes many countries which are also on the White List, such as Hong Kong, Liechtenstein and Switzerland.

2) The Black List contained in the Ministerial Decree of 21 November 2001 was issued for the purposes of the CFC regime. It was replaced, from fiscal year 2016, by a reference to countries or territories - other than EU Member States or EEA States (i.e. Norway, Iceland and Liechtenstein) - whose ordinary or special tax regimes result in a nominal level of taxation that is less than half the level of the corporate income tax rates in Italy[7]. As a result, the CFC Black List, even if not expressly repealed, is no longer effective[8].

   This new definition of Black-List countries also applies for dividend taxation purposes. When arising from a Black-List jurisdiction and paid to an Italian corporate taxpayer, 100 percent of the dividends are subject to income tax (instead of benefitting from the ordinary 95 percent exemption). Similarly, capital gains realised by a resident company from the sale of shares are fully subject to corporate income tax if the investee is resident in a Black-List country (instead of benefitting from the participation exemption).

3) The Black List contained in the Ministerial Decree of 23 January 2002 was introduced for the purposes of the rule on the non-deductibility of Black-List costs (i.e. costs and expenses arising from transactions with related or unrelated companies or undertakings resident or located in a Black-List jurisdiction). Until fiscal year 2015, the deduction of such costs and expenses was subject to certain restrictions. With effect from fiscal year 2016, the Black-List cost regime has been repealed, to allow all costs to be deducted in accordance with the general rules, including the arm's length principle. As a result, this Black List, even if not expressively repealed, is no longer effective[9].

4) There is also a Black List for the purposes of the financial transaction tax ('FTT')[10]. Under the FTT Decree, intermediaries (i.e. banks and investment companies) are considered to be the purchasers or final counterparties of the execution order if they are located in countries on the Black List and are involved in any way in the execution of the transaction[11]. For the purposes of FTT, Black-List countries or territories are those with which Italy has no agreements on the exchange of information and assistance in collecting tax credits.

Final comments

The addition of many countries to the White List should allow foreign investors to benefit from a more favourable tax regime, especially, but not only, with respect to financial income; therefore, this must be seen as a favourable measure that may boost foreign investment. However, there are still some controversial or unclear points. Firstly, the lack of official clarification on the entry into force of the amendments to the White List may create uncertainties among operators. Secondly, confusion may arise as some countries are on both the White List and a Black List - indeed, it is not clear why there is still more than one Black List. Finally, in the case of the CFC rule, the replacement of the Black List with a definition of 'low tax regimes', which must be verified on a case by case basis, seems to result in more complexity and is not fully compliant with the OECD guidelines[12].

(5) Meaning that shares sold during a 12-month period do not represent more than 20 percent of the voting rights or 25 percent of the stated capital.

(6) If a non-resident entrepreneur or enterprise moves to Italy from a White-List country, the Italian tax basis of the business assets and liabilities will be their current market value.

(7) In other words, less than 13.95 percent (half of IRES plus IRAP at the ordinary rates).

(8) See Italian Revenue Agency Circular no. 35/2016.

(9) See Italian Revenue Agency Circular no. 39/2016.

(10) A regulation of 1 March 2013, as subsequently amended, contains a list of countries other than those that are considered 'black' for FTT purposes.

(11) See our Tax Alert of 28 June 2016.

(12) See the BEPS Final Report on Action 3. The ATAD Directive (EU Directive 2016/1164 of 12 July 2016), by contrast, considers the use of white, black and grey lists to be 'acceptable'.

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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