Italy expands its 'white list'

September 8, 2016

In brief

Italy has released a new 'white list' — jurisdictions that provide for an adequate exchange of tax information with Italy. The list includes countries and territories, such as the Cayman Islands, Bermuda, Jersey, Guernsey, that previously lacked access to several favorable domestic Italian tax regimes, such as certain withholding and capital gain exemptions.

Broadening the white list allows Italian-resident taxpayers to benefit from certain domestic tax provisions, such as the notional interest deduction (NID) on equity contributions received from persons established in those countries.

The new Italian white list is expected to take effect on September 6, 2016, the 15th day following the date that it was published in the Italian Official Gazette. We expect the Italian tax authorities to further clarify the new white list's effectiveness.

In detail

The new Italian white list updates the list first introduced by ministerial decree dated September 4, 1996, and amended from time to time. The Ministry of Economy and Finance on August 9, 2016, decreed the new white list and published it in the Official Gazette no. 195, on August 22, 2016.

The white-listed countries and territories each provide for an adequate exchange of tax information with Italy. The list, which has increased from 73 to 123 jurisdictions, now also includes countries and territories that have executed tax information exchange agreements (TIEAs) with Italy that comply with Organization for Economic Cooperation and Development (OECD) standards, even in the absence of a treaty to prevent double taxation. This is the case for the newly added Cayman Islands, Cook Islands, Guernsey, Gibraltar, Isle of Man, and Jersey. The complete new Italian white list is included below.

The Italian white list, originally introduced in 1996, included countries that had a tax treaty with Italy allowing for the adequate exchange of tax information. Tax-resident or 'institutional' investors established in those countries were entitled to a domestic exemption with respect to interest income earned from certain financial instruments — that is, those subject to the tax regime provided for by Legislative Decree no. 239/1996.

Application of the white list has since been extended to other domestic tax exemptions, such as certain capital gains realized by non-resident investors and income derived from Italian funds or from Italian securitization vehicles, and to other tax provisions and beneficial regimes, including the domestic tax treatment of income distributed by foreign funds and the notional interest deduction (NID).

The addition of certain countries and territories to the white list therefore will have the following positive consequences for investors based in those countries:

- Resident investors in jurisdictions added to the white list will benefit from domestic tax exemptions for the following Italian-sourced income:
  - interest on government bonds
  - interest on corporate bonds and similar securities issued by banks and listed corporations
  - interest on listed corporate bonds and similar securities issued by non-listed corporations
  - interest on non-listed corporate bonds and similar securities issued by non-listed corporations to the extent the bondholders are 'qualified' institutional investors as defined by Italian regulatory law (mainly banks and other financial institutions)
  - interest on notes issued by securitization vehicles established according to Law no. 130/1999
  - income derived from certain Italian funds – UCITS (Undertakings for the Collective Investment in Transferable Securities) and AIF (Alternative Investment Fund) - including Italian private equity and alternative funds and
  - capital gains derived from the disposal of certain financial investments, such as shares of non-publicly traded Italian companies representing less than 20% of the voting rights or less than 25% of the capital.
- 'Regulated' foreign investment funds and pension funds established in jurisdictions added to the white list will benefit from domestic tax exemptions for income derived from Italian real estate investment funds (REIFs) and SICAFs (closed-end investment companies, or 'società di investimento a capitale fisso'), and
- 'Regulated' foreign investment funds established in jurisdictions added to the white list will benefit from domestic tax exemptions for interest on regular medium-long term (i.e., having a duration longer than 18 months) loans directly or indirectly provided to Italian corporations, to the extent they comply with regulatory provisions.

Further, Italian corporations that receive, directly or indirectly, equity contributions from resident investors in countries added to the white list now will be able to claim the NID on those contributions because they are no longer restricted by specific anti-abuse provisions.

The decree does not explicitly state the effective date of the new white list. This may be particularly relevant for the newly added countries. However, according to the general rules, it should take effect the 15th day following the publication of the decree in the Official Gazette. It is not clear at this point whether the new white list will have retroactive effect, such as from the beginning of fiscal year 2016, or the ratification date of each bilateral agreement between Italy and the newly added countries.

Finally, the decree explicitly states that, in the case of repeat violations for competent authorities that fail to cooperate, the relevant country or territory will be removed from the list. Therefore, if the exchange of tax information with the foreign country is not, or will cease to be, effective and adequate, the country's white list status may change.

The takeaway

The new white list finally aligns Italy's domestic tax law provisions with the Italian treaty network, which the Italian government has significantly increased over the last few years.

Foreign investors established in countries now included on the white list should consider possible new Italian opportunities.

The newly inserted countries or territories are underlined in italics

The updated White List per Decree of August 9, 2016

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

Let's talk

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